

Frank (MA)  
Hilliard  
Kaptur

Miller, George  
Pastor  
Stupak

Visclosky

1018

PRIVILEGES OF THE HOUSE—IN  
THE MATTER OF REFUSALS TO  
COMPLY WITH SUBPOENAS  
ISSUED BY COMMITTEE ON RE-  
SOURCES

NOT VOTING—53

Barr  
Barton  
Bilbray  
Campbell  
Chenoweth-Hage  
Clay  
Cox  
Cramer  
Crowley  
Danner  
Dickey  
Dixon  
Dunn  
Fattah  
Fowler  
Franks (NJ)  
Ganske  
Gilchrest

Hefley  
Hinchey  
Hutchinson  
Isakson  
Jefferson  
Johnson, Sam  
Kasich  
Kingston  
Klink  
Kolbe  
Lazio  
Martinez  
McCollum  
McCrery  
McInnis  
McIntosh  
McIntyre  
Metcalf

Mollohan  
Oliver  
Peterson (PA)  
Regula  
Sanders  
Serrano  
Shays  
Spratt  
Stark  
Talent  
Tauzin  
Thompson (MS)  
Watkins  
Watts (OK)  
Waxman  
Weiner  
Wise

Mr. GUTIERREZ changed his vote  
from “nay” to “yea.”

So the joint resolution was passed.

The result of the vote was announced  
as above recorded.

A motion to reconsider was laid on  
the table.

Stated for:

Mr. TAUZIN. Mr. Speaker, on rollcall No.  
563, I was inadvertently detained. Had I been  
present, I would have voted “yea.”

Mr. YOUNG of Alaska. Mr. Speaker, I  
rise to a question of the privileges of  
the House and, by direction of the  
Committee on Resources, I call up a  
privileged report (Rept. No. 106-801).

The SPEAKER pro tempore. The  
Clerk will read the report.

The Clerk read as follows:

CONTEMPT OF CONGRESS

REPORT ON THE REFUSALS TO COMPLY WITH  
SUBPOENAS ISSUED BY THE COMMITTEE ON  
RESOURCES

DON YOUNG, CHAIRMAN

**U.S. House of Representatives**  
**Committee on Resources**  
**Washington, DC 20515**

**LETTER OF TRANSMITTAL**

July 27, 2000

Honorable Dennis J. Hastert  
Speaker of the House of Representatives  
Washington, D.C.

Dear Mr. Speaker:

Since May 1999, the Committee on Resources has been conducting an oversight review of payments made by a private corporation to two federal employees with duties affecting public lands. That oversight project focuses on three areas: the payments and the source of the funds used to make the payments; the possibility that those payments affected policies and actions concerning public lands; and statutes, rules and practices of the Department of the Interior and Department of Energy which were circumvented or inadequate to disclose the payments.

During the course of our work, many witnesses refused voluntary interviews and requests for records. In June 1999, the Committee authorized me to issue subpoenas in this oversight project. I thereupon issued subpoenas requiring the production of records from various parties. In spite of the plain requirements of one subpoena, certain documents were heavily redacted. In February 2000, that same party and two others announced publicly that they intended to refuse production under subpoenas issued on February 17, 2000. Further subpoenas were also met with defiance.

On May 4, 2000, the Subcommittee on Energy and Mineral Resources began a series of hearings in this matter. Because many important witnesses had refused requests for interviews, I issued subpoenas requiring appearances at four hearings. During the course of those hearings, four witnesses refused to answer questions ruled by the Subcommittee to be pertinent and ordered to be answered.

This Report includes facts describing the refusals by Mr. Henry M. Banta; Mr. Keith Rutter; and Ms. Danielle Brian Stockton to both refuse compliance with subpoenas for records and refuse answers to pertinent questions while testifying under subpoena; the refusal of Mr. Robert A. Berman to answer pertinent questions while testifying under subpoena; and the refusal of the Project on Oversight to produce subpoenaed records.

The Committee on Resources reports these facts to the House with a recommended resolution authorizing you to report the facts of these refusals to the United States Attorney for the District of Columbia. If the House accepts the Committee's recommendation and adopts our report, upon certification by you, the United States Attorney would ask a grand jury to consider Contempt of Congress charges against these parties.

The standards of proof applicable to these offenses is a matter for another branch of government. This Committee and the House of Representatives fulfill the legislative branch's obligation by making a report of the facts.

During consideration of the report, the Committee considered and rejected a motion to abandon the historical view of the House and the established practice of the Committee on Resources regarding claims of common law privileges such as the attorney-client privilege.

The Committee on Resources believes that the important work of this oversight project and the broader oversight responsibilities of the Congress require action to sanction these parties for refusing compliance with duly authorized subpoenas. Oversight of possible abuses of public trust often require the use of subpoena power. If subpoenas may be openly defied, the power of Congress to conduct oversight is eroded.

The Committee on Resources voted to approve the attached report and resolution and recommends favorable action by the House of Representatives.

DON YOUNG  
Chairman

**CONTEMPT OF CONGRESS**

Mr. Young of Alaska, Chairman of the Committee on Resources,  
with Mrs. Cubin, Chairman of the Subcommittee on Energy and Mineral Resources  
submits the following to the Committee on Resources

**REPORT****Introduction**

Chairman DON YOUNG together with Representative BARBARA CUBIN, Chairman of the Subcommittee on Energy and Mineral Resources, submits to the Committee the following Report including the following Resolution recommending to the House of Representatives that Mr. Henry M. Banta; Mr. Robert A. Berman; Mr. Keith Rutter; Ms. Danielle Brian Stockton; and the Project on Government Oversight, a corporation organized in the District of Columbia, be cited for Contempt of Congress:

*Resolved*, That pursuant to sections 102 and 104 of the Revised Statutes of the United States (2 U.S.C. §§192 and 194), the Speaker of the House of Representatives shall certify to the United States Attorney for the District of Columbia the report of the Committee on Resources detailing (1.) the refusal of Mr. Henry M. Banta; Mr. Keith Rutter; and Ms. Danielle Brian Stockton to produce papers subpoenaed by the Committee on Resources and the refusal of each to answer questions while appearing under subpoena before the Subcommittee on Energy and Mineral Resources; (2.) the refusal of the Project on Government Oversight, a corporation organized in the District of Columbia, to produce papers subpoenaed by the Committee on Resources; and (3.) the refusal of Mr. Robert A. Berman to answer questions while appearing under subpoena before the Subcommittee on Energy and Mineral Resources, to the end that Mr. Henry M. Banta; Mr. Robert A. Berman; Mr. Keith Rutter; Ms. Danielle Brian Stockton; and the Project on Government Oversight be proceeded against in the manner and form provided by law.

The Committee on Resources directed the preparation of this Report by a Motion adopted on July 12, 2000 by a vote of 26 to 11 (Exhibit FF), after Mr. Banta, Mr. Rutter, Ms. Brian, and the Project on Government Oversight defied rulings by the Committee on Resources ordering production of the papers over objections, and after the Subcommittee on Energy and Mineral Resources sustained rulings by the chair which overruled objections raised and ordered that questions be answered by Mr. Banta, Mr. Berman, Mr. Rutter, and Ms. Brian. (Exhibit GG)

## Committee Consideration

On July 19, 2000, the Full Resources Committee met in open session with a quorum present to consider a resolution and report of contempt against Henry M. Banta; Keith Rutter; Danielle Brian Stockton; and the Project on Government Oversight, a corporation organized in the District of Columbia, for failure to comply with subpoenas for records; and against Henry M. Banta, Keith Rutter, Danielle Brian Stockton and Robert Berman for refusing to answer pertinent questions while testifying under subpoena.

Congressman Jay Inslee (D-WA) offered an amendment to the report; the amendment was defeated by a roll call vote of 16 to 26, as follows:

**Committee on Resources**  
**U.S. House of Representatives**  
**106th Congress**

Full Committee Date 7-19-00  
Roll No. 1

Bill No. \_\_\_\_\_ Short Title Resolution & Report regarding Contempt of Congress.  
Amendment or matter voted on: Amendment offered by Mr. Inslee

Member	Yea	Nay	Present	Member	Yea	Nay	Present
Mr. Young (Chairman)		X		Mr. Miller	X		
Mr. Tauzin		X		Mr. Rahall	X		
Mr. Hansen		X		Mr. Vento			
Mr. Saxton		X		Mr. Kildee	X		
Mr. Galleghy		X		Mr. DeFazio			
Mr. Duncan		X		Mr. Faleomavaega	X		
Mr. Hefley		X		Mr. Abercrombie	X		
Mr. Doolittle		X		Mr. Ortiz			
Mr. Gilchrest		X		Mr. Pickett			
Mr. Calvert		X		Mr. Pallone			
Mr. Pombo		X		Mr. Dooley	X		
Mrs. Cubin		X		Mr. Romero-Barcelo	X		
Mrs. Chenoweth-Hage		X		Mr. Underwood	X		
Mr. Radanovich				Mr. Kennedy			
Mr. Jones		X		Mr. Smith			
Mr. Thornberry		X		Mr. John			
Mr. Cannon				Mrs. Christensen	X		
Mr. Brady		X		Mr. Kind	X		
Mr. Peterson		X		Mr. Inslee	X		
Mr. Hill		X		Mrs. Napolitano	X		
Mr. Schaffer		X		Mr. Tom Udall	X		
Mr. Gibbons		X		Mr. Mark Udall	X		
Mr. Souder		X		Mr. Crowley	X		
Mr. Walden		X		Mr. Holt	X		
Mr. Sherwood		X					
Mr. Hayes		X					
Mr. Simpson		X					
Mr. Tancredo		X		<b>TOTAL</b>	<b>16</b>	<b>26</b>	

No further amendments were offered, and the Committee on Resources approved the resolution and report by a roll call vote of 27-16, as follows:

Committee on Resources  
U.S. House of Representatives  
106th Congress

Date 7-19-00

Roll No. 2

Bill No. \_\_\_\_\_ Short Title Resolution & Report regarding Contempt of Congress.

Amendment or matter voted on: Final Passage

Member	Yea	Nay	Present	Member	Yea	Nay	Present
Mr. Young (Chairman)	X			Mr. Miller		X	
Mr. Tauzin	X			Mr. Rahall		X	
Mr. Hansen	X			Mr. Vento			
Mr. Saxton	X			Mr. Kildee		X	
Mr. Gallegly	X			Mr. DeFazio		X	
Mr. Duncan	X			Mr. Faleomavaega		X	
Mr. Hefley	X			Mr. Abercrombie	X		
Mr. Doolittle	X			Mr. Ortiz			
Mr. Gilchrest	X			Mr. Pickett			
Mr. Calvert	X			Mr. Pallone			
Mr. Pombo	X			Mr. Dooley		X	
Mrs. Cubin	X			Mr. Romero-Barcelo		X	
Mrs. Chenoweth-Hage	X			Mr. Underwood		X	
Mr. Radanovich				Mr. Kennedy			
Mr. Jones	X			Mr. Smith			
Mr. Thornberry	X			Mr. John			
Mr. Cannon				Mrs. Christensen		X	
Mr. Brady	X			Mr. Kind		X	
Mr. Peterson	X			Mr. Inslee		X	
Mr. Hill	X			Mrs. Napollitano		X	
Mr. Schaffer	X			Mr. Tom Udall		X	
Mr. Gibbons	X			Mr. Mark Udall		X	
Mr. Souder	X			Mr. Crowley		X	
Mr. Walden	X			Mr. Holt		X	
Mr. Sherwood	X						
Mr. Hayes	X						
Mr. Simpson	X						
Mr. Tancredo	X			TOTAL	27	16	

### **I. Background**

In April 1999, an oil industry publication reported that two federal employees had been paid by the Project on Government Oversight (POGO). (Exhibit A) POGO is a private corporation which is pursuing changes in oil valuation policies and regulations. The payments, totaling \$383,600 to each official, were derived from the private corporation's participation in a False Claims Act lawsuit alleging fraudulent underpayment of royalties due on oil from federal and Indian leases.

In May 1999, the Committee on Resources opened an oversight review to: examine the payments; the possibility that the payments tainted or cast a shadow over recent major oil valuation policy actions; and to review agency rules and procedures which may have been circumvented or inadequate to stop the payments. On June 9, 1999, the Committee authorized the Chairman to issue subpoenas in this matter. (Exhibit B)

The Committee's oversight review began by making official written requests for documents and information from the Department of the Interior, the Department of Energy, and POGO. Later in 1999, subpoenas duces tecum were issued to POGO, Mr. Berman, and Mr. Speir.

Analysis of records and information gathered through subpoenas, official requests, and other means cast considerable doubt on the explanations provided by the parties. Records of POGO Board of Directors meetings and of POGO's dealings with Mr. Berman and Mr. Speir suggested that the three parties intended a binding agreement to equally share POGO's oil litigation proceeds. This agreement was concluded orally in early December 1996, memorialized on January 8, 1998, and restated in writing on October 8, 1998. None of these written or oral forms of the agreement suggest that the payments were intended as public service awards. An excerpt from minutes taken of the October 27, 1998, POGO Board of Directors meeting along with testimony received by the Subcommittee on Energy and Mineral Resources indicates that consultation with attorneys and accountants led to a decision to record the payments as awards but does not suggest that the Board intended or understood the payments as such.

Information was gathered and further research and analysis was conducted through the balance of 1999. By March of 2000, the Committee concluded that a more robust inquiry was required to attempt to determine the purpose and nature of the POGO/Berman/Speir agreement; to examine its possible effects on federal oil valuation and royalty policy deliberations and actions; and to review the agency ethics and financial disclosure rules and policies which may have been circumvented in concealing the agreement or which were inadequate to uncover such an agreement.

On March 21, 2000, Chairman Young charged the Subcommittee on Energy and Mineral Resources with advancing the oversight inquiry. In the letter making that charge, Chairman Young also stated a revised subject of the oversight inquiry. (Exhibit C) That statement of

subject remains unchanged. It was provided to the parties soon after it was transmitted to the Subcommittee and on numerous subsequent occasions.

## **II. Authority and Legislative Purpose**

The authority of the Committee on Resources to conduct this oversight review has been provided to the parties cited for Contempt of Congress in correspondence and in statements at the opening of hearings.

The Committee on Resources is a duly established committee of the House of Representatives, pursuant to the Rules of the House of Representatives, 106<sup>th</sup> Congress. The jurisdiction granted to the Committee by House Rule X includes “petroleum conservation on public lands. . . .” and “[p]ublic lands generally”, which plainly includes policies and programs for collecting royalties owed on crude oil from federal and Native American leases and related matters. House Rule X 2(a) and (b) confer general oversight responsibility on the Committee on Resources. Clause 2(a)(1)(A) of Rule X charges the Committee on Resources with conducting oversight examinations of “the application, administration, [and] execution . . . of federal laws”. Clause 2(a)(1)(B) of Rule X extends the oversight mandate to “conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation.” Clause 2(b)(1)(B) of Rule X additionally empowers the Committee to examine the “operation of Federal agencies” which administer matters under the Committee’s jurisdiction. (Exhibit D)

Under these mandates contained in the Rules of the House of Representatives, 106<sup>th</sup> Congress, the Committee on Resources has clear authority to conduct an oversight review of payments made to federal oil valuation and royalty policy advisors; the possible effect of those payments on federal oil valuation and royalty policy deliberations and actions; and laws and regulations and federal policies which bear on those payments.

Rule 6 of the Rules for the Committee on Resources, 106<sup>th</sup> Congress, establishes the Subcommittee on Energy and Mineral Resources and delegates to it jurisdiction and responsibility for “Petroleum conservation on the public lands . . .” and related matters. (Exhibit E)

Since the First Congress, the legislative branch has conducted inquiries into suspected corruption and mismanagement by federal officials. Supreme Court decisions confirm the power of Congress to engage in oversight and investigation and to reach all sources of information enabling it to carry out its legislative function. Congress, through duly established committees such as the Committee on Resources, has considerable power to require from executive agencies, private persons and organizations production of information needed to discharge legislative branch functions.

The Supreme Court has also firmly established that the oversight and investigative power of Congress is integral to legislative branch functions and is implicit in the Constitution's general vesting of legislative power in Congress. Eastland v. United States Servicemen's Fund (421 U.S. 491, 504 n. 15 (quoting Barenblatt v. United States, 360 U.S. 109, 111 (1950))) reiterates that Congress' "scope of power of its power of inquiry . . . is as penetrating and far reaching as the potential power to enact and appropriate under the Constitution." Watkins v. United States reaffirmed that statement and made it clear that Congress' oversight and investigation power is "at its peak when the subject is alleged waste, fraud, abuse, or maladministration within a government department." (354 U.S. 178, 187 (1957))

The authority of the Committee on Resources to issue subpoenas is equally clear. House Rule XI 2(m) authorizes the Committee to issue subpoenas and to delegate that power to the Chairman under its own rules. (Exhibit F) Committee Rule 4(e) governs issuance of subpoenas. (Exhibit G) Under that authority, on June 9, 1999, the Committee delegated subpoena power to the Chairman for purposes of this oversight review. The Chairman has exercised that authority by issuing subpoenas duces tecum and subpoenas to appear before the Subcommittee on Energy and Mineral Resources. The Chairman has also exercised that authority to consider and rule on objections, to alter the terms of subpoenas to accommodate objections, and to order production of withheld records.

During the course of hearings, the Chairman of the Subcommittee on Energy and Mineral Resources has exercised the authority of a chairman to consider and rule on objections and to order that questions be answered by witnesses appearing under subpoena.

### **III. Refusals to Comply With Subpoenas**

#### **A. Henry M. Banta**

See Exhibit H for information and subpoenas.

#### **February 17, 2000 Subpoena Duces Tecum**

Mr. Banta has refused to comply with this subpoena by:

(1.) Redacting records: Mr. Banta produced a photocopy of a document on 8 ½" X 11" POGO letterhead which was redacted so severely as to have no independent meaning. (Exhibit I) In the upper left hand corner, the date "February 5, 1998" is typed. Approximately 7.125" from the top of the page, along the left hand margin and indented, the words "III. Oil Case Discussion" is typed. All other portions of the first page of the document and the entire second page is stamped "Redacted Based Upon Lack of Pertinency" Mr. Banta provided no information or arguments to permit the Committee to review and rule upon his objection to producing the redacted portions. Chairman Young ruled by a letter dated June 26, 2000, that Mr. Banta was required to produce unredacted

versions of responsive records. (Exhibit S) The Committee sustained that determination and ordered production of such records on July 12, 2000, by a vote of 26 to 11. (Exhibit FF)

The Committee has obtained a document under subpoena to POGO which appears to be the same as the severely redacted document produced by Mr. Banta. (Exhibit J ) The POGO version of the document is redacted differently and establishes that Mr. Banta concealed a portion of this document which is pertinent to the subject under examination by the Committee.

Mr. Banta produced a redacted version of minutes taken of the October 27, 1998, POGO Board of Directors meeting. (Exhibit AA) A version of these minutes obtained by subpoena from POGO establishes that Mr. Banta's redaction concealed a portion of this record which is pertinent to the subject under examination by the Committee. (Exhibit BB) Chairman Young ruled by a letter dated June 26, 2000, that Mr. Banta was required to produce unredacted versions of responsive records. (Exhibit S) The Committee sustained that determination and ordered production of such records on July 12, 2000, by a vote of 26 to 11. (Exhibit FF)

(2.) Refusing to Comply with Orders to Produce: Mr. Banta, as required by this subpoena, provided a log of responsive records withheld under a claim of privilege. The Chairman reviewed each claim and ruled on each. Mr. Banta was ordered to produce many of the withheld records but was invited to provide additional information to support claims of attorney-client or attorney work product privileges asserted by Mr. Banta. That offer was not accepted. On June 26, 2000, Chairman Young ordered Mr. Banta to produce twelve specified records which do not qualify for protection under the judicial branch privileges for attorney-client communications or attorney work product.(Exhibit S) These rulings and orders were sustained by the Committee on July 12, 2000, by a vote of 26 to 11, as noted above. (Exhibit FF)

On July 12, 2000, by a vote of 26 to 11(Exhibit FF), the Committee also sustained the Chairman's rulings that neither 29 U.S.C. §1733 or 30 U.S.C. §1733 are applicable to withholding records sought to be protected under those claims and must be produced. Mr. Banta is withholding four specified records under these claims.(Exhibit CC)

Mr. Banta is also refusing to produce eight records under claims that they are not pertinent to the statement of the subject under examination contained in Chairman Young's March 21, 2000, letter to Representative Cubin. Chairman Young considered each claim and overruled each. (Exhibits K and S) On July 12, 2000, by a vote of 26 to 11, the Committee sustained these rulings and ordered that the records be produced. (Exhibit FF)

**April 10, 2000 Subpoena Duces Tecum**

Mr. Banta has refused to comply with this subpoena by:

- (1.) Failure to Comply: Mr. Banta did not produce a required log of responsive records withheld under a claim of privilege.
- (2.) Refusal to Produce: Mr. Banta possesses but did not produce an unredacted agenda for the February 17, 1998, POGO Board Meeting and unredacted minutes of the October 27, 1998, POGO Board meeting.

**Subpoena to Appear on May 18, 2000**

This subpoena was issued by Chairman Young on May 9, 2000. It required Mr. Banta to appear and testify before the Subcommittee on Energy and Mineral Resources on May 18, 2000. (Exhibit H)

Prior to appearing at that hearing and a hearing on May 4, 2000, Mr. Banta was provided with a statement of the subject under examination, with a copy of the Committee rules and relevant portions of House rules, and was advised that he would be placed under oath and may be accompanied by counsel to advise on constitutional rights and privileges.

During testimony on May 4, 2000, and May 18, 2000, Mr. Banta answered without objection or volunteered information about the link between POGO's oil royalty litigation effort and the agreement to pay Mr. Berman and Mr. Speir; his knowledge of specific aspects of and actions taken during POGO's oil royalty litigation effort; and his professional assessment of POGO's chances of success in its case or as a co-relator in Johnson v. Shell. But when asked specifically about his knowledge of Johnson v. Shell while that case was under seal, he refused to answer. The Chair ruled the question to be pertinent and within jurisdiction of the Subcommittee and Committee. The question was asked again and an answer was again refused. On June 29, 2000, the Subcommittee, by a vote of 9 to 0, sustained the Chairman's ruling and order that the question be answered. (Exhibit GG)

The relevant excerpt from the hearing transcript is attached as Exhibit L.

**B. Mr. Robert A. Berman**

See Exhibit M for information and subpoenas.

**Subpoena to Appear on July 11, 2000**

On April 17, 2000, Chairman Young issued a subpoena requiring Mr. Berman to appear before the Subcommittee on Energy and Mineral Resources on May 18, 2000. That subpoena is

not at issue in this report. On June 29, 2000, Chairman Young issued a subpoena requiring Mr. Berman to appear again before the Subcommittee, on July 11, 2000. (Exhibit M)

At the May 18, 2000, hearing, Mr. Berman objected to conducting the hearing outside of Executive Session, citing a House rule applicable to conducting closed-door business meetings and mark-ups. In a letter received on the morning of the hearing, Mr. Berman's attorney, Steven C. Tabackman, made the same incorrectly grounded objection. (Exhibit N) These missteps notwithstanding, the Chairman made a corrected motion to discuss closing the hearing to the public, on behalf of Mr. Berman. The motion was defeated on a voice vote. When questioned, Mr. Berman refused to answer unless one of two demands was met: Members who Mr. Berman believed had defamed him waived their constitutional immunity for official acts and remarks so that Mr. Berman might sue them for defamation; or those allegedly offending Members apologize to Mr. Berman and state publicly that they had no basis for making statements found objectionable by Mr. Berman.

Mr. Berman was warned against refusing to answer questions on this basis and was dismissed by the Chairman.

At the July 11, 2000, hearing, proceedings were conducted in Executive Session and under House Rule XI.2(k) procedures applicable to Investigative Hearings on a motion approved by a vote of 9 to 0. (Exhibit GG)

#### **Refusal to Answer**

When questioned in Executive Session during the July 11, 2000, hearing under the extraordinary witness protections provided by Rule XI.2(k), Mr. Berman again refused to answer questions unless Members acquiesced to his demands and limited questioning to matters deemed to be pertinent by Mr. Berman. After answers were refused to several questions, the Chairman ruled each question to be pertinent to the stated subject under review and ordered Mr. Berman to answer each question not answered. Mr. Berman did not comply. Thereupon, by a vote of 6 to 3, the Subcommittee sustained the Chairman's rulings and orders and directed that Mr. Berman's refusal to answer while testifying under subpoenas be reported to the Committee on Resources. (Exhibit GG) Mr. Berman was thereupon provide with a final opportunity to answer. He declined. The Chairman then provided an extraordinary opportunity for Mr. Berman and Mr. Tabackman to explain their grievances to the Subcommittee. Even after being allowed to deliver these highly unusual statements, Mr. Berman refused to answer questions posed by Members.

Under questioning by a Minority Member, Mr. Berman made it clear that he would refuse to answer any questions unless his grievances and demands were addressed satisfactorily. (Exhibit Z)

Relevant portions of the July 11 hearing transcript are included as Exhibit O.

**C. Mr. Keith Rutter**

See Exhibit P for information and subpoenas.

**April 10, 2000 Subpoena Duces Tecum**

Mr. Rutter has refused to comply with this subpoena by:

(1.) Withholding Records: At the time the subpoena was issued and served, Mr. Rutter was required to provide the IRS Form 990 filed by POGO for tax years 1996, 1997, and 1998. The 1998 form had been produced in answer to the June 18, 1999, subpoena to POGO. It was included in this subpoena to ensure that the Committee had any changes or modifications made since the original filing. Later production by POGO confirmed that the copy provided to the Committee has been superceded by a corrected form filed on July 10, 2000. Under the continuing obligation imposed by this subpoena, Mr. Rutter is now required to produce the corrected form for tax year 1998, the forms for tax years 1996, 1997, and 1999. None of these has been produced. By letter dated June 26, 2000, (Exhibit S) Chairman Young rejected Mr. Rutter's objection, made in a letter dated April 21, 2000, from Stanley M. Brand, that this subpoena requirement is not pertinent to the stated subject under review and is outside the authority of the Committee. (Exhibit Q) On July 12, 2000, the Committee sustained the Chairman's ruling in this regard and his order that the records be produced, by a vote of 26 to 11, as discussed earlier. (Exhibit FF)

It must be noted that although Mr. Rutter asserts that the IRS Form 990 filed by POGO for tax years 1996 through 1999 need not be produced to the Committee, POGO itself has provided two versions of the 1998 Form 990 under a subpoena which did not separately specify tax records of oil litigation income, expenses, and disbursements.

This subpoena also required Mr. Rutter to produce the publicly-available records relating to POGO's IRS Form 1023, an application for tax exempt status. This record would help determine whether the POGO Board of Directors intended to reward Mr. Berman and Mr. Speir under an existing or newly established program of public service monetary awards. Mr. Rutter's objection (Exhibit Q) to producing this record was considered by the Chairman and rejected. (Exhibit S) That ruling and the Chairman's order to produce the record was sustained by the Committee on July 12, 2000, by a vote of 26 to 11, as noted earlier. (Exhibit FF)

This subpoena also required Mr. Rutter to produce the articles of incorporation for POGO and the corporate by-laws in effect for the years 1996 through 1999. These records are needed to help determine whether the agreement to pay Mr. Berman and Mr. Speir the initial payments served a valid corporate purpose or may have been intended as part of an improper scheme. Mr. Rutter objected to this production requirement as not pertinent to the subject under review. (Exhibit Q) That objection was considered by the Chairman

and rejected by a letter dated June 26, 2000. (Exhibit S) That ruling and order to produce these records was sustained by the Committee on July 12, 2000, by a vote of 26 to 11, as noted earlier. (Exhibit FF)

This subpoena also required Mr. Rutter to produce records relating to civil litigation deposition testimony given by Ms. Brian which concerned Mr. Rutter's job responsibilities. By letter dated April 21, 2000, Mr. Rutter objected that this item constituted a written interrogatory outside the authority of the Committee. (Exhibit Q) On June 26, 2000, Chairman Young overruled this objection, explaining that the subpoena only required production of existing records concerning or relating to the facts contained in Ms. Brian's deposition, and ordered the records produced. (Exhibit S) On July 12, 2000, the Committee sustained this ruling and order by a vote of 26 to 11, as discussed earlier. (Exhibit FF)

(2.) Failure to Produce: Mr. Rutter failed to provide a required log of responsive records withheld by him under a claim of privilege.

**D. Ms. Danielle Brian Stockton**

See Exhibit T for information and subpoenas.

**June 18, 1999 Subpoena Duces Tecum**

Ms. Brian has refused to comply with this subpoena by:

(1.) Redacting Records: Pursuant to this subpoena, the Committee received two excerpts from two POGO Board of Directors meetings conducted some 20 months apart. (Exhibit R) Complete minutes should have been produced for those meetings and for all meetings at which subjects concerning oil royalty litigation and payments to Mr. Berman and Speir were discussed. By letter dated June 26, 2000, Chairman Young ordered that unredacted copies of responsive records be produced to the Committee. (Exhibit S) That determination was sustained by the Committee on July 12, 2000, by a vote of 26 to 11, as discussed above. (Exhibit FF)

(2.) Withholding Records: Sworn civil litigation testimony by Ms. Brian indicates that the Board may have touched on these matters at as many as twenty sessions from 1994 until the present. Excerpts from Board meeting minutes provided to the Committee, outside of any subpoena, establish that Ms. Brian failed to produce complete minutes and agendas for Board meetings held on January 5, 1995; December 9, 1996; February 17, 1998; October 27, 1998; April 26, 1999; and September 9, 1999. (Exhibits X, EE, R and J)

**February 17, 2000 Subpoena Duces Tecum**

Ms. Brian has refused to comply with this subpoena by:

(1.) Failure to Comply: Ms. Brian failed to produce a required log of responsive records withheld under a claim of privilege. Chairman Young ordered production of a log of responsive withheld records by letter dated June 26, 2000. (Exhibit S) On July 12, 2000, the Committee sustained this order by a vote of 26 to 11, as noted above. (Exhibit FF)

**Subpoena to Appear on May 18, 2000**

On April 17, 2000, Chairman Young issued a subpoena requiring Ms. Brian to appear before the Subcommittee on Energy and Mineral Resources on May 18, 2000. (See Exhibit T)

Prior to appearing at that hearing, Ms. Brian was provided with a statement of the subject under examination, with a copy of the Committee rules and relevant portions of House rules, and was advised that she would be placed under oath and may be accompanied by counsel to advise on constitutional rights and privileges.

**Failure to Comply**

Ms. Brian has refused to comply with this subpoena by:

Refusing to Answer: At the outset of her testimony on May 18, 2000, Ms. Brian acknowledged without protest that the hearings and oversight review were examining POGO's oil royalty litigation effort and consequent payments to Mr. Berman and Mr. Speir. Ms. Brian also volunteered her view of the effect the POGO/Berman/Speir agreement had on Johnson v. Shell. But, when asked if she attempted to discuss Johnson v. Shell with Mr. Johnson while the case was under seal or if she had knowledge of the case while it was under seal, Ms. Brian refused to answer. Both questions were ruled by the Chair to be pertinent and within the jurisdiction of the Subcommittee and Committee. Both questions were repeated. Each time, Ms. Brian refused to answer. On June 29, 2000, the Subcommittee, by a vote of 9 to 0, sustained the Chairman's ruling and order that the question be answered. (Exhibit GG)

The relevant excerpts from the hearing transcript are attached as Exhibits U and V.

**E. Project on Government Oversight**

See Exhibit W for information and subpoena.

**February 17, 2000 Subpoena Duces Tecum**

The Project on Government Oversight has refused to comply with this subpoena by:

(1.) Refusing to Produce Records: By letter from Stanley M. Brand, Esq., on behalf of POGO, to Chairman Young dated February 28, 2000, POGO objected to providing records reflecting the names and office addresses of POGO Directors during the period of January 1, 1994, through the present. (Exhibit DD) POGO argued that the identity of the individuals legally responsible for overseeing POGO's oil royalty campaign, for authorizing the agreement to pay Mr. Berman and Mr. Speir, and for authorizing the initial payments of \$383,600 each made on November 2, 1998, are not pertinent to the stated subject under review. By letters dated April 6, 2000, and June 26, 2000, Chairman Young overruled this claim and ordered production of these records. (Exhibits K and S) By a vote of 26 to 11 on July 12, 2000, the Committee sustained this ruling and order that these records be produced, as noted previously. (Exhibit FF)

Records provided to the Committee by the Department of Treasury establishes that POGO possesses records showing the names and addresses of Board members. Common sense presumes that notices of Board meetings and other correspondence with and among the governing body is not addressed from memory.

This subpoena required POGO to produce records concerning payments to Mr. Berman or Mr. Speir discussed since January 1, 1999. POGO offered no argument to justify failing to comply with this requirement. By letters dated April 6, 2000, and June 26, 2000, Chairman Young ordered production of such records. (Exhibits K and S) By a vote of 26 to 11 on July 12, 2000, the Committee sustained this order, as noted earlier. (Exhibit FF)

The Committee has obtained a record from Stanley M. Brand, Esq. which establishes that POGO possesses but did not produce a record described by this item of the subpoena. (Exhibit X) In response to an inquiry from Chairman Young, Mr. Brand informed the Committee that the record in question was not intended to satisfy any subpoena and was not offered by POGO. (Exhibit Y)

(2.) Refusing to Comply: POGO has not provided a log of responsive records withheld from production under this subpoena under a claim of privilege. Chairman Young ordered production of a log of responsive withheld records by letter dated June 26, 2000. (Exhibit S) On July 12, 2000, the Committee sustained this order by a vote of 26 to 11, as discussed earlier. (Exhibit FF)

#### **IV. Rules Requirements**

##### **Committee Oversight Findings and Recommendations**

Pursuant to clause 3(c) of Rule XIII of the Rules of the House of Representatives, and as outlined in this report, the Committee held several oversight, investigative and business meetings and made the findings that are reflected in this report.

##### **Committee on Government Reform Oversight Findings**

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

##### **New Budget Authority, Entitlement Authority, and Tax Expenditures; Committee Cost Estimate; Congressional Budget Office Estimate; and Federal Mandates Statement**

The Committee finds that clauses 3(c)(2) and (3) of Rule XIII, clause 3(d) of Rule XIII, sections 308(a) and 402 of the Congressional Budget Act of 1974, and section 423 of the Unfunded Mandates Reform Act are inapplicable to this report. Therefore, the Committee did not request or receive a cost estimate from the Congressional Budget Office and makes no findings as to the budgetary impacts of this report or the costs incurred to carry out the report.

##### **Advisory Committee Statement**

The Committee finds that section 5(b) of the Federal Advisory Committee Act is inapplicable to this report.

##### **Applicability to Legislative Branch**

The Committee finds that the report does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

##### **Changes in Existing Law**

This report makes no changes in any existing federal statute.

##### **Preemption of State, Local or Tribal law**

This report does not preempt any state, local or tribal law.

Mr. YOUNG of Alaska (during the reading). Mr. Speaker, I ask unanimous consent that the report be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. PEASE). Is there objection to the request of the gentleman from Alaska?

There was no objection.

Mr. YOUNG of Alaska. Mr. Speaker, by direction of the Committee on Resources, I offer a privileged resolution (H. Res. 657) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

#### H. RES. 657

*Resolved*, That pursuant to sections 102 and 104 of the Revised Statutes of the United States (2 U.S.C. §§192 and 194), the Speaker of the House of Representatives shall certify to the United States Attorney for the District of Columbia the report of the Committee on Resources detailing (1) the refusal of Mr. Henry M. Banta; Mr. Keith Rutter; and Ms. Danielle Brian Stockton to produce papers subpoenaed by the Committee on Resources and the refusal of each to answer questions while appearing under subpoena before the Subcommittee on Energy and Mineral Resources; (2) the refusal of the Project on Government Oversight, a corporation organized in the District of Columbia, to produce papers subpoenaed by the Committee on Resources; and (3) the refusal of Mr. Robert A. Berman to answer questions while appearing under subpoena before the Subcommittee on Energy and Mineral Resources, to the end that Mr. Henry M. Banta; Mr. Robert A. Berman; Mr. Keith Rutter; Ms. Danielle Brian Stockton; and the Project on Government Oversight be proceeded against in the manner and form provided by law.

The SPEAKER pro tempore. The resolution constitutes a question of privilege under rule IX. The gentleman from Alaska (Mr. YOUNG) is recognized for 1 hour.

Mr. YOUNG of Alaska. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from California (Mr. GEORGE MILLER).

#### AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. YOUNG OF ALASKA

Mr. YOUNG of Alaska. Mr. Speaker, I offer an amendment in the nature of a substitute.

The SPEAKER pro tempore. The Clerk will report the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. YOUNG of Alaska:

Strike all after the resolving clause and insert the following:

#### SECTION 1. CERTIFICATION OF REPORT REQUIRED.

Pursuant to sections 102 and 104 of the Revised Statutes of the United States (2 U.S.C. 192 and 194), the Speaker of the House of Representatives shall certify the report of the Committee on Resources (House Report No. 106-801) detailing the refusals described in section 2 to the United States Attorney for the District of Columbia, to the end that each individual referred to in section 2 be proceeded against in the manner and form provided by law.

#### SEC. 2. REFUSALS DESCRIBED.

The refusals referred to in section 1 are the following:

(1) The refusal of Mr. Robert A. Berman to answer questions while appearing under sub-

poena before the Subcommittee on Energy and Mineral Resources of the Committee on Resources.

(2) The refusal by Mr. Henry M. Banta to answer questions while appearing under subpoena before the Subcommittee on Energy and Mineral Resources of the Committee on Resources.

(3) The refusal by Ms. Danielle Brian Stockton to answer questions while appearing under subpoena before the Subcommittee on Energy and Mineral Resources of the Committee on Resources.

Mr. YOUNG of Alaska (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alaska?

There was no objection.

Mr. YOUNG of Alaska. Mr. Speaker, in the event that the amendment is agreed to, I ask that the question on adoption of the resolution be divided within section 2 so that refusal of each of the three named individuals will be voted on separately.

The SPEAKER pro tempore. The Chair would advise the gentleman that if the amendment to the resolution is adopted, the question on adoption of the resolution, as amended, under the precedents, is grammatically and substantively divisible among the three paragraphs of section 2. There would then be an opportunity for a separate vote on the certification of each individual. The question will be so divided at the appropriate time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

(Mr. YOUNG of Alaska asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Alaska. Mr. Speaker, I filed a supplemental report yesterday. It changes only a technical error on the cover page of Report 106-801 filed by me on July 27, 2000.

Digressing from my statement. My colleagues in this body, this is a very serious time, and I hope that Members will take the time to listen to both sides of this argument and make a decision by voting favorably on this resolution.

The resolution now before the House reports the refusal of three subpoenaed witnesses to answer questions at hearings of the Subcommittee on Energy and Mineral Resources of the Committee on Resources, chaired by the gentlewoman from Wyoming (Mrs. CUBIN). The questions were critical to the committee's oversight.

Every Member of this House, Democrat, Republican and Independent, should support this resolution. If not, we undercut the future capability of this Congress and future Congresses to get information we will need to do our job required by Article One of the Constitution.

The resolution is about whether the authority of a subpoena from a House committee means anything or whether

it can be ignored. If Members think a subpoena means something, then they will vote for this substitute resolution. If they think committees, in their oversight roles, not the witnesses, should define the questions at a hearing, then they will vote in favor of reporting the facts relating to the refusal of Ms. Brian, Mr. Berman, and Mr. Banta to answer questions posed by the gentlewoman from Wyoming (Mrs. CUBIN) and her subcommittee.

On institutional grounds alone, every Member, Democrat, Independent, Republican, should support this contempt resolution. Every Member should also support the report on the merits as well.

Mr. Speaker, this all started 18 months ago, when the gentlewoman from Wyoming (Mrs. CUBIN) and I read alarming press reports. These reports detailed government employees within the departments we oversee being paid and using proceeds from a whistleblower lawsuit called Johnson and Shell.

That successful whistleblower suit is now basically settled. It returned over \$400 million to the U.S. Treasury. But serious questions about the payments to Federal employees from the whistleblower share of the Johnson and Shell settlements forced us to launch an oversight review in the process. We issued document requests and, as we learned more about the payments, we scheduled hearings.

In those hearings, the gentlewoman from Wyoming exposed details of a secret plan hatched years earlier by a group called POGO, the Project on Government Oversight. The plan was to pay two government oil royalty experts huge, and I mean huge, sums of money from the Johnson and Shell settlement.

POGO used the Federal employees to learn information about the court-sealed Johnson and Shell lawsuit. I repeat, the court-sealed Johnson and Shell lawsuit. And then POGO filed its own suit making the same allegation on top of the Johnson and Shell lawsuit.

1030

Settlement proceeds from POGO's share were then funneled to the government insiders.

The gentlewoman from Wyoming (Mrs. CUBIN) and her subcommittee discovered how POGO had already split nearly a million dollars from Federal employees. She discovered their written agreements. She discovered their plans to take \$7 million in total from the whistleblowers' lawful reward. She discovered their plan split the bounty with the Federal Government employees. She discovered how the Department of Justice told POGO not to make the payments. May I stress that again. She discovered how the Department of Justice told POGO not to make those payments.

The Committee experienced major, major stonewalling from those cited in

this resolution while inquiring about the scheme. The culprits say that they, not Congress, determine what the American people will know about the largest payoffs ever accepted by Federal employees. That stonewalling probably constitutes a Federal misdemeanor known as contempt of Congress. A vote by the House is required to begin enforcement and condemn the payoffs, which is why we consider the report and resolution today.

That oversight review included examining whether the two federal insiders, Robert A. Berman of Interior or Robert A. Speir of Energy, sold Government secrets or exercised influence to favor those who paid them.

The Committee on Resources, under its rules, authorized me to issue subpoenas on this manner. After it became clear that the key players would not provide good-faith cooperation to the subcommittee of the gentlewoman from Wyoming (Mrs. CUBIN), I issued subpoenas for important documents. Later, the participants refused requests for voluntary interviews. So I issued subpoenas for witnesses to appear before the Subcommittee on Energy and Mineral Resources chaired by the gentlewoman from Wyoming (Mrs. CUBIN).

Those subpoenas did not mean much to the key players in this scandal. They were denied. The gentlewoman from Wyoming (Mrs. CUBIN) and the subcommittee were very fair. Her subcommittee's oversight, as far as it could go, was an excellent example, I believe, of responsible Government.

Under the statute, if the House adopts this report, the Speaker is authorized to present the facts to the United States Attorney for the District of Columbia.

Consistent with the constitutional separation of powers, we do not weigh the evidence of refusal to comply with subpoenas against the reasonable doubt standard of proof.

Our obligation is to report the facts as we know them. To fail to make this report will surrender authority over oversight to witnesses rather than reserving it to the House as placed by the Constitution.

To put it simply, these parties have left no choice for the Congress. They refuse to comply.

May I remind Members on both sides of the aisle, if they do not adopt this resolution, if they do not adopt this report, if they do not adopt what I am asking today, future Congresses will be thumbed at and told to forget their role as oversight.

These people offered and accepted the largest payoffs ever made by Federal bureaucrats. But they claim the arrogant, self-serving privilege to tell the United States that they may not ask certain questions about their agreement, what they knew, and how they knew it.

They say to us, we will not tell you how we used Government insiders to learn information. We will not tell you

how we used Government employees to leach settlements from the true whistleblowers in the Johnson suit. They say, we will not tell you about our secret agreements to make payments to Federal oil policy insiders who helped them.

To protect our mandate as Members of the House, our mandate to gather information and facts needed by the people to legislate and oversee Federal agencies, as I have said before, we, as a Congress, must adopt this resolution. We must stand up for the people's right to know what happened in this payoff.

The substitute resolution I have offered will authorize the Speaker to certify to the U.S. Attorney only the refusal of Henry M. Banta, Robert A. Berman, and Danielle Brian Stockton to answer questions while appearing under subpoena before the Committee. This is done in light of new evidence suggesting that POGO and Banta paid Berman for influencing regulations. And that documentation is in the report. This is a very serious felony.

There is no longer an interest in grouping Mr. Rutter and the other officers or directors of the corporation known as POGO with serious felons. Nor does the Committee on Resources wish to needlessly compound the charges by having Banta and Stockton face two misdemeanor counts each along with the serious charges which now seem certain.

My colleagues will hear that this is all about big oil, it is about a so-called whistleblower. This is nothing to do with the whistleblower. In fact, the whistleblower testified before our committee that the suit was filed on top of his so they could gather the money to be paid to these Federal employees.

It is probably one the most corrupt actions by Federal employees under a sealed document where they issued information that was confidential to, in fact, receive reimbursement.

This is about this Congress and the next Congress and the Congresses in the future. If we do not adopt this resolution, then we have said to ourselves that this Congress no longer counts in seeking the truth.

Mr. Speaker, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this matter this morning is a serious matter because potentially for three citizens of the United States criminal liability may attach. But as serious as this matter is for those three individuals, this matter is not about what the chairman of my committee just said it is about.

This is about three or four individuals that blew the whistle on a plan by 15 oil companies to deny the American taxpayers of the revenues that they were entitled to through the royalty program for oil taken off of the public lands that are owned by the people of the United States.

Since that whistle has been blown and that program was discovered and

the intentions were made known, this committee served not a single subpoena on those oil companies, this committee sent not a single letter to those oil companies asking them how they could defraud the Government of the United States.

Instead, this committee rounded up four individuals and started badgering them in a hearing that had no definition, no parameters, and changed direction numerous times.

But the core finding is clear and convincing. Fifteen oil companies settled for almost half a billion dollars, settled. How much more of American taxpayer has been denied we will not know because of that settlement. This is about what happens to an American citizen when the full force and effect of the Federal Government and the Congress of the United States comes down on their head because this was not a situation where these citizens have been charged with anything, indicted of anything, tried for anything, or convicted of anything. There is a notion in the majority's head that these people somehow are involved in criminal activity. So far, the only showing of any of that will be if the suggestion is that some criminal liability attaches for failing to answer the question.

But, mind you, the Supreme Court of the United States is very, very cognizant of the force and the effect of the United States Government when it comes down on a private citizen; and it says that, when it asks a citizen a question in a hearing like this, it must do something that is very important, it must show that citizen, because that citizen must make a snap decision because liability attaches as to whether or not they are going to ask that question over and over, the Supreme Court has told this Congress of the United States that it must show them that that question is pertinent to the investigation.

Now, the questions that they asked these individuals were questions where they were wandering around in side-bar litigation that had nothing to do with the writing of the regulations. And these witnesses, while they provided thousands and thousands of documents, while they have answered hundreds and hundreds of hours of questions in depositions and elsewhere, where the committee, in fact, had the evidence that they were seeking in the depositions in the other case, they have now decided that they are going to make victims of these four people.

The victims here are the taxpayers of the United States who were defrauded of half a billion dollars or more by 15 oil companies.

Mr. Speaker, I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield 8 minutes to the good gentlewoman from Wyoming (Mrs. CUBIN), the chairman of the subcommittee that conducted most of the hearings.

Mrs. CUBIN. Mr. Speaker, I rise today because I have a solemn duty to

inform the House of the investigation which I, as the chairman of the Subcommittee on Energy and Minerals, was assigned to lead.

I am very saddened by the remarks of the previous speaker because he knows very well that is not what this case is about.

I rise today to uphold this body's constitutional right to conduct lawful and thorough investigative oversight hearings on issues that are important to the American people. This is not something that we choose to do. This is something that we swear we will do when we raise our hand and take the oath that we will support the Constitution and the laws of this body.

This issue actually stems from the filing of a False Claims Act lawsuit in a Federal courthouse in Texas by two whistleblowers who uncovered royalty underpayments by major oil companies to States, local governments, and to the Federal Government.

The fact is these two whistleblowers are named Benjamin Johnson and John Martinek. These are the good guys. These are the private citizens who exposed the major oil companies' underpayment of royalties. They are responsible for getting an additional \$400 million for Federal, State, and local governments, in other words for American citizens.

Johnson and Martinek should be commended for their efforts in stopping this illegal practice. There is no question in anyone's mind that the oil companies should pay every single penny that they owe in royalties. That is in everyone's best interest. It is the law and it must be done.

But the problem in this case is that the whistleblowers case was sealed in the Eastern District of Texas, and what that means is no details of the suit could be released outside the courthouse but the very existence of the suit could not be established either. The existence had to be kept secret.

However, somebody leaked the details of that secret lawsuit to the Project on Government Oversight (POGO). That insider information allowed POGO to file a nearly identical lawsuit in the same court in Eastern Texas.

Now, could that be a coincidence? No, when we consider there are 91 Federal courts in the United States.

The Committee on Resources investigation focused on two Federal employees, Robert Speir and Robert Berman. Mr. Speir is with the Department of Energy. Mr. Berman is currently an employee with the Department of Interior. They are suspected of leaking the details of that lawsuit to POGO.

Again, the whistleblowers are the ones who filed the original suit. Well, POGO had been lobbying looking for a lawsuit to file, and they also had been lobbying for changing oil valuation rules. These two employees' rewards for doing what they did, for releasing the information and for assisting in changing oil valuation rules, were re-

warded \$383,000 each already. They had a signed agreement that they would be awarded that amount of money and, if the agreement had been adhered to, they would have received another \$4 million between them.

Just a few days ago, the Committee obtained from the Department of Justice the smoking gun, which establishes that at the very time POGO and the two Federal employees were conducting this arrangement, that Robert Berman, the Interior employee, was actively engaged in drafting a new regulation dealing with the collection of oil royalties.

These regulations were being sought by POGO. The regulations indirectly benefit POGO chairman and directly benefit his clients, who are in the business of collecting oil royalties.

The key players in the investigation were issued subpoenas, as was stated by the chairman of the Committee on Resources, but they refused to answer questions. The Subcommittee on Energy and Mineral Resources asked Danielle Brian Stockton, the executive director of POGO; Henry Banta, the chairman of the POGO board; and Bob Berman questions.

Let me tell my colleagues the question that they were asked, direct questions about how POGO and the Federal employees learned about this sealed lawsuit in the Eastern District of Texas.

This is a quote from the Record.

Mr. Banta: "I believe that issue is not pertinent to the inquiry of this Committee."

1045

Ms. Brian: "I will not answer that question because of my pertinence."

Mr. Berman stated another answer to another question: "I will not answer this subcommittee's questions."

In other words, these people were saying they would determine what were pertinent questions for them to be asked in our investigation. They were saying they would decide what questions could be asked and be made pertinent.

Ask yourself, how well would the American people have been served if the tobacco company executives refused to answer the questions that they were asked?

Ask yourself, will Firestone and Ford Motor Company executives have to answer questions put to them by committees when the committees are trying to protect the safety and the very lives of American people?

The Constitution and the rules of the House of Representatives are clear on this point. The House must conduct oversight hearings, and the House and only the House is the judge of what answers they need to questions in a thorough oversight review.

I have to remind you, we are not here today to vote on the guilt or the innocence of the three people who are cited in this resolution. That is up to the Department of Justice, which at this very

time is conducting an investigation into all of the activities having to do with the payments and the proceeds of the lawsuit. Our job is to vote on the resolution to adopt this report, saying that the Speaker is authorized to present the facts of this report to the United States Attorney for the District of Columbia. The United States Attorney will then place the matter before a grand jury. The grand jury, not the House, will decide whether any or all of these parties will be found with contempt. The people cited in this report have defied this body's constitutional right to ask the why and the how about the largest payoffs ever accepted by Federal employees. The American people have a right to know. That is the nature of today's resolution.

I hope that everyone will vote in support of the authority of the Congress of the House of Representatives.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Oregon (Mr. DEFazio).

Mr. DEFazio. Mr. Speaker, the esteemed chairman said earlier this is a question about whether Congress no longer counts in seeking the truth. The question is bigger than that. The question is does Congress count in seeking the whole truth? This is a scandal of huge proportions. A smaller scandal during the Harding administration, Teapot Dome, rocked Washington and the country, brought down powerful figures.

The American people were defrauded of \$438 million, at least, by Big Oil. And who is our committee pursuing? A few individuals and a nonprofit. The chairman talked about the huge payments these folks got. Guess what? There may have been some improprieties. It is being investigated. But their huge payments are less than one-tenth of 1 percent of the money of the fraud that was committed by the largest oil companies in the world against the American people, the American public and the Americans' resources. I would be willing to pay one-tenth of 1 percent to uncover these sorts of corruption and underpayment. These are the same companies, of course, that today are ripping off the American consumers. Their earnings have doubled. Number one, of course in doubling of earnings is Exxon Mobil, \$58.8 billion. Not bad. They were number three here in defrauding the American public.

Now, how much time has the committee spent subpoenaing the very well-paid CEOs and highly paid executives of these companies? None. Zero. None. Not one second has been spent by the majority in investigating what Big Oil did to defraud the American public and whether that fraud is still going on today, because these huge profits are coming from somewhere. We know they are coming from the American taxpayers' pockets. Is it also coming from our precious natural resources? Are they still underpaying? We do not know. Because the committee has no time for that. But it can relentlessly

pursue a couple of low-ranking government officials who uncovered this fraud.

This is a fraud on the American people. This whole process is a fraud on the American people.

Mr. YOUNG of Alaska. Mr. Speaker, I yield 4 minutes to the gentleman from Hawaii (Mr. ABERCROMBIE), a member of the committee that really sat in on this program.

Mr. ABERCROMBIE. Mr. Speaker, I rise in support of this request of the body.

Mr. Speaker, because of the activities of some other committees in this Congress, the investigation power, the oversight responsibilities of the Congress and its committees has come into some disrepute. There is no question about that. And anytime you do oversight and investigation, you are bound to have the kinds of emotional responses such as we just heard, because there are very real issues involved, fraud, deception, misrepresentation, et cetera.

I am sorry to say that the character and the tenor of some of the investigation activities has resulted in, I will not say contempt for but certainly suspicion of any activities by any congressional committee with respect to its investigation and oversight responsibilities. This goes all the way back to the time of the un-American activities and un-American activities committees, all their notorious investigations which had as their object I think by general conclusion of history at least the humiliation of other people and the pursuit of partisan purposes which had very little to do with the ostensible investigatory objectives which were announced when these investigations and inquiries began.

But, Mr. Speaker, I have concluded that this particular investigation and the manner in which it has been conducted, regardless of whether it should have been broader or should have been deeper, gone into other things, those are legitimate questions that could be raised and the chairman can answer it or not answer it as he will. But with respect to the activities that are cited in this resolution, I think we have to uphold not only the right but the obligation of the committee to pursue it. There is enough information here to convince me that a serious breach of public trust may have occurred. The grand jury must be given the tools it needs follow this investigation wherever it leads, and this report is one of those tools. Congress has an oversight responsibility, no matter which party is in the majority. If I refuse to support this report, this resolution, I believe I am undermining the authority of future Congresses, including ones with Democratic majorities, to exercise their oversight responsibilities.

I cannot answer for other people's motives. If you want to insist that the Republicans are doing something for partisan reasons or the Democrats are responding for partisan reasons, you

can do it. I cannot be responsible for those kinds of things. I can only answer for my own. I have seven pages of bills that I have been associated with, including committee responsibility in the area of minerals and oil and royalties where I think I can stand on my record.

So I want to refer then to what I think are the compelling reasons here. The power of future Congresses to exercise oversight of Federal agencies and to uncover waste, fraud and abuse by using its constitutional authority to compel testimony and evidence will be severely harmed if the report is not adopted. This Congress must pursue this matter and seek sanctions for the refusal to answer questions about it. And, finally, the U.S. Attorney may not act unless the House passes this resolution. That action cannot be deferred because the underlying subpoenas expire with the 106th Congress, so a Federal grand jury impaneled in the District of Columbia needs to receive it. Voting for the report does not constitute a verdict or an indictment. The report if passed will allow the grand jury to do its work.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 5 minutes to the gentlewoman from New York (Mrs. MALONEY).

(Mrs. MALONEY of New York asked and was given permission to revise and extend her remarks.)

Mrs. MALONEY of New York. Mr. Speaker, I rise to oppose this resolution in the strongest possible terms. This highly-partisan, misguided resolution has absolutely no business being on the floor of the House today in the final hours of this session.

As many of my colleagues know, I have been involved for years working on issues related to Federal oil royalties and I have worked tirelessly in a bipartisan way along with the gentleman from California (Mr. HORN) of the Committee on Government Reform. What we looked into, put simply, is that we discovered that the oil industry is required, of course, to pay royalties to the Federal Government based on the value of the oil taken out of the Federal land that is owned by the people of this country. But what we found is that they were paying prices to the government that was much lower than the price that they were paying themselves. They were keeping two sets of books, one for themselves and one for the people of America. And guess who was making the record profits? The oil companies.

The gentleman from California (Mr. HORN) and I issued several reports; and as a result of our hearings and investigations by GAO that documented the underpayment, there has been a change in the way that the oil companies now pay the Federal Government. They now pay market price. That is what is fair. When you look at these settlements, POGO has been part of lawsuits that have resulted in \$438 million coming back into the Federal Treasury. That

is a lot of teachers, that is a lot of roads, that is a lot of police officers. They did good work in uncovering fraud and abuse. \$438 million. And because of the change in the formula now, OMB projects there will be 66 additional million dollars coming into the Federal Treasury because the oil companies will be paying market price.

Yet instead of looking at the systemic underpayment, and they uncovered seven different ways that they underpaid the government, yet this committee did not have one hearing on the systemic underpayment by the oil companies. And here they are. Why do we not have some hearings on this? As my colleague pointed out, there is an article today in the Washington Post and it reports that the highest energy prices since the 1990 Persian Gulf crisis have produced a financial bonanza for the Nation's three largest oil companies which yesterday reported quarterly profits totaling a record \$7 billion, double last year's earnings.

Mr. Speaker, I include for the RECORD other editorials that have appeared around this country.

[From the Casper Star-Tribune, July 28, 2000]

#### CUBIN GOES ASTRAY WITH ATTACK ON WHISTLEBLOWERS

Wyoming's lone representative in Congress, Barbara Cubin, seems to have lost her way. Cubin has been using her House Energy subcommittee to launch an attack on the nonprofit watchdog group, Project on Government Oversight (POGO). POGO investigates whistleblower allegations that certain mineral industries are cheating the American public by not paying royalty payments when taking mineral resources found on federal land—as required by law.

Recently, a number of oil companies settled a lawsuit filed by POGO that alleged that they systematically underpaid royalties on oil produced. POGO gave a portion of that settlement as public service awards to two federal employees who helped POGO make its case against the oil companies.

Under Cubin's direction, her subcommittee is investigating those service awards, instead of those companies accused of cheating the American taxpayers by underpaying on federal royalties.

We take no position on whether POGO broke the law by offering the awards or whether the federal employees did by accepting them. However, fairness demands that if two employees working to uncover royalty fraud should be victims of a politically motivated investigation, then surely the subcommittee's attention should be directed at the oil companies that have settled lawsuits alleging that they cheated the public out of vast amounts of money over the years.

One doesn't fix the system by attacking those who are trying to ferret out fraud. Cubin should turn her attention to the problem of royalty underpayment, which would be a more legitimate exercise of the power of her subcommittee.

The direction Cubin has taken with her subcommittee makes one wonder whether her loyalties lie with the American taxpayer or with the extractive industries that contribute so much to her campaign fund.

[From the Anchorage Daily News, May 16, 2000]

# YOUNG FORGETS WHISTLE-BLOWERS' VALUE, RISK

(By Stan Stephens, Walter Parker and Billie Garde)

Recently, a subcommittee of Chairman Don Young's House Resources Committee began to hold hearings on the activities of a watchdog group, the Project On Government Oversight. Those activities included a lawsuit filed by POGO that alleged that oil companies were shortchanging the government on royalty payments for oil leases on federal land. POGO filed the lawsuit under the False Claims Act, which allows a group or individual to sue a private company they believe is defrauding the government. The act also grants them a percentage of any fine levied as a result.

Young took umbrage with the fact that POGO, upon being awarded a \$1.1 million settlement in the case, paid two whistle-blowers \$380,000 each for their decade-long work in bringing these abuses to light.

Never mind that the oil industry settled the case for more than \$300 million, all but admitting that it indeed had been stealing from the federal government for years. That apparently didn't phase Young in the slightest. By the way, it should be mentioned that the two whistle-blowers are federal employees, one of whom works for the Interior Department—certainly not Young's favorite agency.

It is unfortunate that Young has paid attention solely to the issue of the payments made to the whistle-blowers. Ignored in this entire affair is the fact that two whistle-blowers saved the American people hundreds of millions of dollars. Now they are being retaliated against in the most draconian manner by Young.

Unfortunately, this conforms to the pattern that so many whistle-blowers have seen before. Instead of having their allegations investigated, they find themselves the target of investigations and in most cases outright harassment and intimidation.

Last February, Young issued subpoenas to POGO asking for, among other things, copies of the executive director's home telephone records. It is remarkably odd that Alaska's congressman, who prides himself on his patriotism and strict adherence to the Bill of Rights, would so invade the privacy of a U.S. citizen.

Would that the Interior Department issue a subpoena asking for Don Young's home telephone records! The resulting outcry from the "congressman for all Alaska" would resound from Washington, D.C., to Fort Yukon and back again. Twice.

The recent actions of the House Resources Committee bring to mind an incident in the early 1990s that many Alaskans are sure to remember. After the Exxon Valdez spill, Alyeska Pipeline Service Co. enlisted its security firm, the Wackenhut Corp., to investigate a number of environmental activists hoping to ferret out a whistle-blower. Wackenhut proceeded to place taps on telephone lines, sift through trash bins and even set up a phony environmental law firm hoping to gain the trust of key individuals.

When these actions were exposed, a congressional inquiry was held with committee hearings that included Young. Congress rigorously denounced the actions of both Wackenhut and Alyeska.

Young agreed, though some people would say with little enthusiasm, that whistle-blowers who risk their careers and in some cases their personal safety should not suffer retaliation, harassment or intimidation but should instead have their allegations properly investigated. One must wonder if Young

has forgotten those events of only a few years ago now that his actions so closely resemble the very whistle-blower retaliation he admonished.

Further inquiry into the POGO matter reveals that indeed Young's allegations are baseless. He condemns the payments to the whistle-blowers yet ignores that POGO sought professional legal and accounting advice on how to report the payments to the IRS. He also ignores the fact that POGO informed the Justice Department of its intention to make the payments before it did so.

Whistle-blowers are a unique and integral part of exposing fraud, deceit and malfeasance in industry and government. Very often, they are risking ostracism from their colleagues, unjust firings or transfers, and other forms of reprisal.

They deserve our support in their efforts to make workplaces safer, the environment cleaner and both industry and government less riddled with graft and corruption. It seems that our congressman needs once again to be reminded of that.

[From the New York Times, Oct. 27, 2000]

## HOUSE MULLS RARE CONTEMPT CITATION

WASHINGTON (AP).—Despite the rush toward adjournment, the House is pressing ahead on criminal contempt charges against a small, private watchdog group called POGO—the first such proceeding in nearly two decades.

Capitol Hill supporters of the group, the Project on Government Oversight, maintain the contempt citation was retribution by some lawmakers for POGO's campaign against major oil companies that have been accused of shortchanging the government of millions of dollars in royalty payments.

The contempt case has been pursued most vigorously by two oil-state lawmakers—Republican Reps. Don Young of Alaska and Billy Tauzin of Louisiana.

They denied any retribution and said POGO's executive director and a board member were being charged with contempt of Congress because they refused to answer several questions at a hearing earlier this year on the group's involvement in the oil royalty cases.

If found in contempt, the two officials—Danielle Brian and Henry Banta—could face up to a year in prison and a stiff fine, although the decision would be subject to appeal in the courts.

Some Democrats accused Young of pursuing the case as a favor to the oil companies stung by POGO's successful pursuit of the royalty underpayments.

Rep. George Miller, D-Calif., said Thursday that while Young has aggressively pursued POGO, the House Resources Committee has held no hearings on the oil royalty abuses themselves.

Instead, Miller, the committee's senior Democrat, said Republicans were seeking to "punish a small nonprofit organization for exposing illegal actions."

"It's revenge on this government watchdog that had the nerve to stand up and make Big Oil pay," said Rep. Carolyn Maloney, D-N.Y., who has been among the most vocal critics of the federal royalty payment system.

Republican House leaders decided Thursday to bring the contempt resolution up for a floor vote Friday on what could well be the last day of the 106th Congress.

The last criminal contempt resolution to be brought to the House floor occurred in 1983. Its target was Rita Lavelle, then head of the Superfund program at the Environmental Protection Agency, who had refused to appear before a House committee.

In 1997, POGO joined a Texas lawsuit against nearly a dozen major oil companies

accused of underpaying the government on royalties. The case has produced nearly \$500 million in settlements. POGO did not benefit from most of those settlements, but was awarded \$1.2 million from one of the earlier cases.

When the group decided to share \$700,000 of the money with two government workers who had been trying to correct the royalty abuses it caught the attention of Republican lawmakers. The House Resources Committee that Young chairs began an investigation into whether there was an improper payoff.

No evidence of such has surfaced, although the Justice Department continues to investigate.

In an interview, Brian said she and Banta had answered questions about the settlement but that the committee sought details about the litigation still under way in Texas against the oil companies.

"They started asking questions that had nothing to do with our decision to turn money over to the whistleblowers," she said Thursday.

[From the New York Times, May 24, 2000]

## SEE DON JUMP, JUMP, DON, JUMP

Any public servant should be glad to see a vast taxpayer rip-off exposed and set right.

Not representative Don Young, chairman of the House Committee on Resources. He's harassing independent watchdogs at the Project on Government Oversight.

POGO's offense? Pursuing investigations and lawsuits that helped the Treasury recover some \$300 million . . . from Young's generous political patron, the oil industry.

Mobil, Chevron, Texaco and other settled out of court, all but admitting that they cheated U.S. citizens out of money owed for oil pumped from public lands. Exxon, Unocal, Shell and other face a trial in September on the same charge.

Federal law allowed POGO and other watchdogs to share a fraction of the recovered money as a reward. POGO divided its share with two whistleblowers who risked their government jobs to expose the rip-off.

This generosity gave Don Young a pretext, and last year he launched an investigation of POGO, with recent hearings in Washington.

The only thing revealed so far—Young's willingness to abuse his power. His subpoenas are over-reaching. Committee members and staff have badgered and berated witnesses, who are barred from making opening statements on their own behalf.

"This is not a committee in search of the truth, this is a committee meant to punish," says POGO Director Danielle Brian.

"This committee has been used time and again on behalf of special interests who find themselves on the wrong side of the law," says Representative George Miller. He calls the hearings "a witch hunt," noting Young has never held hearings on the oil companies' malfeasance.

See how money in politics works? It can lead "public" servants to jump to the aid of their cash constituents, the public interest be damned.

See Don jump, Jump, Don, Jump.

[From the Washington Post, Mar. 15, 2000]

## U.S. ANNOUNCES A NEW ROYALTY SYSTEM FOR OIL FROM FEDERAL LAND

(By Dan Morgan)

After a four-year battle with the oil industry and its supporters in Congress, the Clinton administration announced yesterday a new system for collecting an additional \$67.3 million a year in royalties on crude oil pumped from federal land and leased offshore tracts.

The new pricing system, which will take effect June 1, was a victory for state governments, public interest groups and members

of Congress who have long contended that the royalties were leased on an artificially low valuation for the oil.

In the future, prices will be pegged closer to the spot, or fair market prices, instead of to an arbitrary value at the wellhead.

Oil industry officials were sharply critical and said they were keeping open the option of asking the courts to review the new federal rule, pending a closer study of the complex provisions unveiled by the Interior Department's Minerals Management Service.

"We're disappointed. The agency missed an opportunity to take a complex system and make it less complicated and fairer," said Ken Leonard, a senior manager at the American Petroleum Institute. He predicted that disputes over pricing would continue, with more litigation and costs to taxpayers.

But Rep. Carolyn B. Maloney (D-N.Y.), who had pressed for the change, hailed yesterday's announcement as one that would "bring to an end the decades-old scam that has permitted big oil companies to rip off the American taxpayer."

Exxon Corp., Chevron Corp. and Shell Oil Co. are among the companies affected by the new pricing mechanism.

Companies have paid about \$300 million to settle claims of past royalty underpayments. But industry allies, led by Sen. Kay Bailey Hutchison (R-Tex.), stalled a new pricing mechanism until last fall, when Republicans and the administration finally reached a deal.

Under the new system, nine states will receive about \$2.4 million in new revenue annually out of the larger royalty payments to the federal government. The amounts involved are small compared with the \$1.2 billion that the federal government was paid in 1998 for oil produced on public land and offshore tracts.

A government watchdog group, the Project on Government Oversight, has been pressing for a revamping of the royalty system since 1993 and took credit yesterday for focusing public attention on the issue.

But its activism has itself draw fire from Republicans in Congress. On Feb. 17, the House Resources Committee issued a subpoena for the organization's phone records, as part of an investigation of its payments by whistle-blowers who revealed royalty underpayments for oil pumped from federal land.

Last week, the American Civil Liberties Union told the House panel in a letter that the subpoena threatens freedom of speech and could chill efforts by citizens groups to root out waste, fraud and abuse.

I would like to read one part of the editorial in the *Anchorage Daily News*: "Ignored in this entire affair is the fact that the two whistleblowers saved the American people hundreds of millions of dollars. Now they are being retaliated against in the most Draconian manner."

We should stand up for whistleblowers, not abuse them. Rather than protecting the public, the Republicans on this committee once again are protecting the powerful. Rather than working toward a national energy policy, the Republicans on this committee are working for the giant oil companies. Why are they not having some hearings on how they worked to abuse the American people by underpaying what is due them? POGO did not rip off the taxpayers. The oil companies ripped off the taxpayers, and they admitted it by paying over \$400 million in underpayments. Would they be paying it if they were innocent?

Mr. Speaker, I feel this is terribly misguided. Why are we not looking at energy policy? Why are we not investigating the underpayments of oil to this country? Why are we abusing whistleblowers who have come forward to help us learn how we can better make government work for the people of this country and close abusive loopholes like the one that existed for years where the big oil companies kept two sets of books, one for themselves, one for the American public and the American public lost billions and billions of dollars?

Mr. Speaker, I rise today to oppose this resolution in the strongest possible terms. This highly partisan, misguided resolution has absolutely no business being on the floor of the House today in the final hours of this session.

As many of my colleagues know, I have been involved in issues relating to Federal oil royalties for a number of years, and I have worked tirelessly in a bipartisan fashion on these issues.

Put simply, in return for taking oil from federal lands, the oil industry is required to pay royalties to the Federal government based on the value of the oil they take.

In 1996, after learning that numerous major oil companies were paying royalties based on prices that were far lower than the market value of the oil they were buying and selling, Mr. HORN and I held a hearing before the Government Management, Information and Technology Subcommittee to look into this issue.

At one of those hearings, whistleblowers and oil industry experts Robert Berman and Robert Speir testified despite considerable resistance from their departments. Project on Government Oversight Executive Director Danielle Brian also submitted written testimony about Federal royalty underpayments.

These hearings and subsequent investigations by the GAO led us to conclude that numerous major oil companies were paying royalties based on prices that were far lower than the market value of the oil they were buying and selling.

Our hearings showed that many of these companies were underpaying royalties, costing the American taxpayer nearly \$100 million a year. Many companies were sued by the Federal government for deliberate underpayment of royalties.

Most have elected to settle and, to date, over \$300 million has been collected. States and private royalty owners have collected almost \$3 billion more including \$17.5 million for the state of Texas and \$350 million for California.

I know that these settlements are not technically admissions of guilt, but they are the closest thing to them that you'll ever get out of companies like Mobil, BP Amoco, and Chevron.

Finally, the Interior Department's new oil valuation rule, which was announced earlier this year, will save the taxpayers at least \$67 million each year. Approximately \$2.4 million of this revenue will be shared with states.

This revenue will put additional teachers in the classroom and preserve our natural resources.

I want every Member in this body to understand this history in order to understand the context of this ill-conceived resolution.

Now, we have finally succeeded in changing the regulations to ensure that the Federal government is fairly compensated for oil taken from Federal lands. We have finally made this change that will return \$66 million a year to the Treasury.

Now, this Congress wants to turn around and persecute and harass the Project on Government Oversight (POGO) a small, nonprofit, government watchdog organization, dedicated to exposing fraud and corruption. Why? Because POGO went after major oil companies and exposed their fraud against the taxpayer—a fraud that was costing us hundreds of millions of dollars in unpaid oil royalties.

And now the oil companies are getting their revenge. They are out to punish POGO and its director, Danielle Brian, for the organization's successful efforts on behalf of the American people.

Mr. Speaker, this is completely unfair and makes absolutely no sense.

Some of my colleagues may remember the last time Congress attempted to hold someone in contempt—it was in 1983, the case of Rita Lavelle, the Director of the Superfund Program under EPA. Ms. Lavelle, a high ranking government official, flat out refused to even appear before the committee investigating her actions.

What we are doing here today in the last moments of the Congress, is attacking a small, nonprofit organization who dared to stand up to the big oil companies. Why didn't they answer some of the committee's questions? Because they had absolutely nothing to do with the committee's supposed investigation.

What really disappoints me about this entire process is that the Resources Committee and the majority have refused to focus on the issues that really matter—they have refused to investigate royalty underpayments, and they have refused to look at legitimate ways to alleviate high energy prices.

So here we are on the floor in the final hours of the 106th Congress, and instead of talking about prescription drugs or smaller class sizes, we are engaging in a partisan witch hunt against a small government watchdog because they stood up to the big oil companies.

Here we are just days before one of the most important elections of our generation.

You would think the majority would be rushing to prove to their constituents that they care about prescription drugs, a patient's bill of rights, small class sizes—but no. Tonight we are engaged in a pathetic act of revenge—revenge on behalf of the oil industry.

So I would say this to my friends on the other side of the aisle, if you represent a marginal district, and you want to go on record in support of big oil, vote for this resolution.

If you want to go on record opposed to an organization whose sole purpose is to eliminate waste, fraud, and abuse, vote for this resolution.

If you want to follow the lead of Governor Bush and Secretary Cheney and do whatever the oil companies want, vote for this resolution.

But if you care about fairness, if you care about good government, oppose this resolution, stand up to big oil, and let's get on with a debate on issues that matter to the American people.

Mr. Speaker, furthermore, I would like to say, at a time of record high oil and gas

prices, as well as record profit-taking by Big Oil, Republicans in this House have chosen, as their only course of action, to punish a non-profit organization for exposing illegal actions by giant oil companies who ripped off the American taxpayer for hundreds of millions of dollars.

Rather than protecting the public, the Republicans, once again, are protecting the powerful.

Rather than working toward a rational energy policy, the Republicans are working for the giant oil companies.

POGO did not rip off the taxpayer. The oil companies ripped off the taxpayer. That has been proven in case after case where the companies themselves have settled this issue to the tune of \$438 million.

This case involves systematic, multibillion dollar underpayments of oil and gas royalties owed to the taxpayers who own these resources. Under prosecution by the Department of Justice, all of these oil companies have settled their outstanding debts by agreeing to pay \$438 million.

But the Resources Committee has failed to investigate those systematic underpayments or the system that permitted them; instead, the committee has run to the defense of the oil industry by investigating those who exposed the underpayments while the real perpetrators, their strong political supporters, get away free.

Yesterday, the Washington Post reported that "The highest energy prices since the 1990 Persian Gulf crisis have produced a financial bonanza for the nation's three largest oil companies, which yesterday reported quarterly profits totaling a record \$7 billion, double last year's earnings."

The majority asserts that this Contempt Resolution is necessary to protect the right of the House to define the target and scope of oversight.

However, this Resolution would not be necessary IF the Majority had adequately and properly defined the target and scope of oversight.

This has not been the case in this investigation. Witnesses were not allowed to make opening statements. The necessary quorum was not present at the time the committee charged the cited individuals with contempt. They prevented Members from asking questions of witnesses. They prevented witnesses from making opening statements or defending themselves.

All but one of the Democrats present at the committee meeting voted against the Resolution because "the Republican Majority's unilateral conduct of the investigation . . . has been biased, procedurally flawed and abusive of the rights of witnesses and Members." We also noted that the Majority's case was incredibly weak and "will not survive balanced judicial review."

We do not dispute the right of the committee to investigate the POGO payments.

We do not dispute the essential facts surrounding the POGO payments.

In November 1998, POGO got about \$1.2 million, or 2 percent, from the settlement and it paid Mr. Berman and Mr. Speir \$383,600 apiece out of its share.

The Majority suspects but has not proved foul play in POGO's decision to make those payments.

POGO characterizes the payments as "awards" for the two men's "decade-long pub-

lic-spirited work to expose and stop the oil companies' underpayment of royalties for the production of crude oil on federal and Indian lands."

Since December 1998, the matter has been under investigation by the Inspector General of the Department of the Interior and the Public Integrity Section of the Department of Justice—as it should be.

The appearance of impropriety created by the payments warrants investigation, but by the proper authorities and we supported the Majority's motion adopted by the Committee on Resources to release to them relevant committee records.

It is for the appropriate law enforcement agencies and, ultimately, the courts, to decide if any laws were broken.

This is particularly the case where, as here, the targets of the Resources Committee's investigation are not senior policy officials, but private citizens or low-ranking civil servants, and where, as here, the committee has shown a strong bias against the targets of its probe.

This contempt resolution is a weak case to present to the House, which last sought to invoke statutory contempt powers in 1983. And even if adopted by the House over our objections, any attempts at prosecution based on this Resolution will not survive balanced judicial review.

That is because the Majority's wrath, primarily directed at POGO, a nonprofit government "watchdog" group—has skewed their objectivity.

The Majority has conducted this investigation in a manner that serves the interests of lawyers for oil and gas companies involved in pending royalty underpayment litigation as well as those who are currently challenging in federal court royalty valuation regulations recently issued by the Department of the Interior to curb royalty payment abuses.

The Majority is confusing the DOJ criminal investigation (i.e., whether there were illegalities in POGO's arrangement to share the proceeds of the False Claims Act settlement with the two employees) with the Contempt of Congress issues. The issue that should be before the House in the contempt resolution is whether the committee's investigation was properly conducted under the Rules and the questions at issue asked with adequate foundation to be deemed "pertinent" under the contempt statute, as strictly construed by the judiciary, all the elements must be proven beyond a reasonable doubt, as is the case with any criminal statute. We argue in the dissenting views that they abused the rules and rights of witnesses and failed to establish, as required by the Supreme Court, that the questions were "pertinent" at the time they were asked.

1100

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is not about the whistleblowers. These were people that divulged information; they were not the whistleblowers, and this constant smoke screen actually disturbs me, because nobody read the report.

Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. BRADY), who also sat on the committee that had these oversight hearings.

Mr. BRADY of Texas. Mr. Speaker, I rise to explain the section of the report

dealing with one of our government employees, Mr. Robert Berman, and how he failed to comply with the subpoena for testimony before the Subcommittee on Energy and Mineral Resources on July 11 of this year.

Let me tell you though why we are not here today. We are not here, even though, as I see it, evidence shows that a special interest group paid two of our government officials, who illegally and unethically used their insider information gained from their position of public trust to line their pockets and that of a special interest group. That is corruption, and it is wrong. But that is not for Congress to decide; that is for the courts to decide.

We are here for something even more important than that. It is to ensure that when Congress seeks the truth for the American public, when we ask a fair question on a serious matter, that we receive an honest, timely answer. It is the authority Congress needed to get to the truth behind Watergate. It is the authority Congress has needed to question industries who deny that they sell their products to young minors. It is the authority we require to expose the IRS when they break their own rules to harass taxpayers. It is the authority we require to hold companies accountable when they sell unsafe products; when the government reaches agreements to sell nuclear weapons to rogue nations. It is the authority of Congress to seek the truth, and while we may not like doing it, it is our obligation.

Let me tell you, in each of those cases, you heard the same compliant: it is a witch hunt; we are being manipulated; this is Big Oil; this is Big Something; we are the good guys. But the fact of the matter is, with these two government insiders and this special interest group, they are not the good guys. We are simply seeking the truth.

First, for the record, let me tell you, Mr. Berman is an employee of the U.S. Department of Interior who received a large amount of money in return for access and information. He was responsible for analyzing developing oil royalty policy for the Interior Department.

All the available evidence, even POGO, the special interest group's own statements, suggest Mr. Berman was paid as a government insider because he agreed with these groups and had the access and information to provide them. That is against the law. He knows it was wrong. He knows that Congress has every right to ask him about that.

Think about this: if someone comes to you at your job and says, "Look, do not tell your boss this, but you are working on a key project for us. We would like to make you part of a lawsuit so that when we receive dollars in settlement from this, we can pay you for that information. Now, do not tell your boss, do not remove yourself from that project, because this is how the agreement works." You would know something was wrong.

Mr. Speaker, I would like to continue, because it gets worse than this.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. HORN).

Mr. HORN. Mr. Speaker, the Subcommittee on Government Management of the then Committee on Reform and Oversight dealt with the Minerals Management Service for a number of months. Let me read you our conclusion. It is titled "Crude Oil Undervaluation, the Ineffective Response of the Minerals Management Service." This was approved by the full committee.

"The Minerals Management Service needs to review its operations to ensure that the amounts which are owed to the Federal Government are collected in a timely fashion. For years, oil companies were able to use complex transactions to disguise premia the whole formulas on the crude oil from the Federal regulators. Now that the Federal Government has determined that there are hundreds of millions of dollars of additional payments owed, Minerals Management must aggressively pursue this problem to protect Federal financial interests. The Minerals Management Service has failed to do so. There is still time to accomplish this task. Until that happens, the crude oil undervaluation issue is a serious hole in the Federal budget deficit that amounts to perhaps \$2 billion nationwide for crude oil leasing. This is a problem that is preventable and requires the attention of senior management in the administration."

This is, frankly, one of the most fouled-up bureaucracies I have seen in 6 years of oversight within the executive branch.

Now, I can see how some of my colleagues on other committees might be bothered by anybody that is trying to lie before you. But the question is, should Congress do it, or should the United States Attorney do it?

Personally, I think some of this has to do with POGO. Now, I wish we had a few more POGOs around here that were watchdogs on the bureaucracy, and perhaps the money that they gave is what bothers a lot of my colleagues.

But the fact is, if that is the way we get information, fine. The POGO operations, I do not know how they run their business, and I really do not care. What I do care about is that we get whistleblowers to tell us the truth.

Mr. Speaker, I am going to vote against this contempt citation. I think it is wrong; it should not be in this House. It should be with the United States Attorney, and it should go before a Federal grand jury, if that is a problem. If the lawyer gave one of the witnesses advice and it is bad advice, such as saying take the fifth, or whatever it is, that is another issue.

I do not think we should be cutting off whistleblowers.

There is a lot of fraud, misuse, in the amount of billions of dollars in the executive branch.

We should encourage whistleblowers.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, again, the gentleman from California misstates. These were not whistleblowers; these were Federal employees divulging confidential information. The whistleblower himself says that they did the wrong thing. That is not a whistleblower.

Mr. Speaker, I yield 3 minutes to the gentleman from Louisiana (Mr. TAUZIN).

(Mr. TAUZIN asked and was given permission to revise and extend his remarks.)

Mr. TAUZIN. Mr. Speaker, this matter involves two things: the first is the facts, so let us get the facts straight. We are talking about a whistleblower lawsuit on royalty valuations that amounted to about a \$400 million claim.

It was not brought by POGO. This whistleblower lawsuit was brought by a whistleblower by the name of Johnson. Johnson filed suit against Shell. Johnson was entitled, under the whistleblower statute, to 17 to 20 percent of the winnings if this whistleblower suit won.

Now, we have these things in Louisiana a lot. The oil companies fight with our State over oil royalty and gas royalty valuations all the time. Some are legitimate disputes; some are not so legitimate.

Johnson brought a suit claiming illegitimate royalty valuations, and Johnson the whistleblower suddenly finds out that POGO gets in its lawsuit and wants a share of the take. POGO in fact weasels its way into that lawsuit and gets about a \$7 million share of the take.

How did POGO get in the lawsuit? POGO got in the lawsuit, we are told, our investigators tell us, because two Federal employees apparently knew about this sealed lawsuit, called their friends at POGO, got them into the lawsuit, and cut a deal to get one-third of the take.

Two Federal employees cut a deal, apparently, with POGO, to each take one-third of \$7 million, to get POGO a share of Mr. Johnson's whistleblower lawsuit. That is what the allegations are.

Now, the second thing we are talking about is whether this Congress, as the watchdog of America over Federal agencies and Federal employees who might do criminal and wrong things, has a right to get straight answers from witnesses we call.

Now, when the two witnesses from POGO and when the Federal official involved here come before our committee and refuse to answer the questions that we ask them about this illicit deal, they do not take the fifth amendment, which they could have done. They simply say, "Hum, Congress, we are not going to talk to you, and you can't do anything about it." They are telling the American people that the eyes and ears of their Congress, elected by the

American public to watchdog Federal agencies, have no power, have no authority. They take that power away from us when they can snub us and say they will not answer legitimate questions in a Federal inquiry.

I want to congratulate the gentleman from Hawaii (Mr. ABERCROMBIE). He said it right. Whether the Democrats control this House, or whether the Republicans control this House, this is the people's House. We are not just here voting for Americans; we are their eyes and ears too over the Federal bureaucracy.

It is our job to make sure Federal employees deal with Americans honestly, and when two Federal employees cut a deal to get one-third of a whistleblower lawsuit and refuse to come and answer questions about it before a committee of this Congress, every Member, Democrat and Republican, ought to rise up and say, the American public, this House, will not be shunned this way. We will not be, in the vernacular of the young, "dissed" in this fashion.

The product of this investigation is critical. The product of this investigation is to uncover criminal wrongdoing, and we ought to proceed with this vote today.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mr. DEUTSCH).

Mr. DEUTSCH. Mr. Speaker, this House has many things to be proud of, but this is not one of the investigations that we have to be proud of.

My colleagues on the other side have invoked the tobacco investigations on several occasions. I do not need to remind my colleagues who was the majority party at that point in time. I think if these are the priorities of this Congress, the people who are watching in America need to know why we need to change Congress.

Let me talk on a little bit of a personal note. I happen to know one of the people who this indictment, this contempt citation, is about, Hank Banta. Hank Banta was my first boss when I worked in Washington in 1981, 19 years ago. I know him well; I consider him a friend. He was a counsel for the Senate Committee on the Judiciary. That was where I worked as an intern and extern for 2 years.

He knows the rules of this House well, and I would tell my colleagues, the gentlewoman from Wyoming (Mrs. CUBIN) and the gentleman from Louisiana (Mr. TAUZIN), one of the reasons that he did not answer is because our rules provide that if they are not pertinent questions to an investigation, the witness has legal right not to answer those questions, not to answer those questions, and he enjoyed that right.

I would just question the criminal nature of this.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, that is not true.

Mr. GEORGE MILLER of California. I yield 2 minutes to the gentleman from Washington (Mr. INSLEE).

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Mr. Speaker, it has been said that this institution is to be a watchdog. In fact, this resolution asks the people's House to become an attack dog, an attack dog for the oil and gas industry.

This is the people's House, and it is a sad day when we turn on the people who expose the fraud to the American people and seek to punish them.

The Watergate investigation has been inveighed as a proud moment of Congress. If this party had been running the Watergate investigation, you would not have subpoenaed Halderman and Ehrlichman and gone after them. You would have investigated Frank Wills, the guy who discovered the burglary.

You are barking up the wrong tree, and it is a sad day. I am proud of the House of Representatives, and I want to warn Members against this resolution for two reasons: number one, if this passes, and if this goes to the criminal justice system, this House will be embarrassed.

I am going to tell you why: unlike many of the speakers today, I was in these hearings, and I saw, time after time after time, the majority party ignore the rules of the House of Representatives. When the judicial system sees this, they will call foul; and our House will be embarrassed by this travesty. If you want to know why these people did not answer some of these questions, it is because they violated the rules of the House.

I want to bring up another issue. As a person who believes privacy is important in this Chamber, I believe in this country we should not have certain conversations forced to be made public by the U.S. Government. The U.S. Government should not force your discussions with your priest to be public, the U.S. Government should not force your conversations with your doctor to be public, and the U.S. Government should not force your conversations with your attorney to be public.

The majority party seeks to violate those privileges, and we brought this to their attention. These folks did not want to answer questions about their conversations with their attorney. Those who believe that the priest's penitent privilege and the attorney-client privileges are sacred rights of Americans, will vote against this resolution. If you believe in privacy and standing up and crying "foul," vote against this resolution.

1115

Mr. YOUNG of Alaska. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. DOOLITTLE).

(Mr. DOOLITTLE asked and was given permission to revise and extend his remarks.)

Mr. DOOLITTLE. Mr. Speaker. This issue is about big payoffs, not big oil. In fact, it is about the biggest payoffs

ever made and accepted by Federal bureaucrats, indeed, over \$750,000 already. This resolution is about our ability as Members of Congress to ask questions of and to get answers from those who made the big payoffs, and those who accepted them.

It is that simple. Members should know that there was a written agreement to funnel \$4 million to two Federal employees. Make no mistake, those who oppose this resolution are sanctioning the ability of people to hide the facts about what goes on in big government agencies from the people and from congressional committees.

This resolution is about holding those who made and accepted these big payoffs to the same standard we would hold any corporation if it made huge payments to Federal workers.

So do not fall for the smoke screen. Big payments to Federal Government workers are wrong. Support the resolution.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 1 minute to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Speaker, I appreciate the gentleman yielding me the time.

As a relative newcomer to this Chamber, I have been following this to understand how the House works, how we can pick out one item for the first time in 17 years to proceed forward with a recommendation for criminal activity.

The U.S. Attorney is already following up on potential misconduct; so that is not the issue here. The issue is, the dealing with the House of Representatives.

Seventeen years ago, Rita Lavelle stonewalled Congress completely, would not answer the phone, would not come forward, would not produce documents.

These are people who did come forward, produced thousands of pages of documents. This has already been deleted by the amendment of the gentleman from Alaska (Mr. YOUNG).

We are looking at something here that looks to me like a pretty broad sweep that is calculated not to get at the problem of misuse of oil royalties. It is not whether or not these people are going to have their behavior investigated. It is, it seems to me, rather a chilling effort in terms of people who come forward and for the first time in 17 years. I think this is indeed a stretch.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Guam (Mr. UNDERWOOD).

(Mr. UNDERWOOD asked and was given permission to revise and extend his remarks.)

Mr. UNDERWOOD. Mr. Speaker, I thank the gentleman for yielding me the time.

As ranking member of the Subcommittee on Energy and Mineral Resources, I sat through hours and hours

of an exercise which we are led to believe involves an illegal and inappropriate activity, a whistleblowing exercise based on insider knowledge.

We are led to believe that these individuals involved were uncooperative and demonstrated a contempt of Congress so egregious that it requires this very special resolution, this very heavy-handed sanction.

What I saw instead was a conscience and deliberate attempt to characterize these whistleblowers as criminals. What I saw was the securing of thousands of pages of information and extensive testimony, which provided the committee with all of the information they needed to conclude that while some questionable activity may have occurred, which should be and is being investigated by the Department of Justice, but that there was also some serious underpayments by the oil companies, but the committee did not pursue the question of the underpayments.

We were not satisfied with this information, the entire picture about the underpayments and the whistleblowers, but instead we focused and continued to pursue this line of questioning and inquiry.

I sat through hours and hours of an exercise which we are led to believe involves an illegal and inappropriate activity—a whistleblowing exercise based on inside knowledge.

We are led to believe that the three individuals involved were uncooperative and demonstrated a contempt of Congress so egregious that it requires this very special resolution—this heavy handed sanction.

What I saw was a conscious and deliberate attempt to characterize the 3 whistleblowers as criminals. What I saw was the securing of thousands of pages of information and extensive testimony which provided the Committee with all of the information they needed to conclude that some questionable activity may have occurred—which should be and is being investigated by DOJ and that there were underpayments by the oil companies. But we didn't pursue the question of the underpayments. But we weren't satisfied with this information, the entire picture about the underpayments and the whistleblowers—No—we wanted to continue to pursue this line of questioning and inquiry—focusing on the whistleblowers which has the net effect of shifting the attention from the serious policy issue of underpayment of the oil companies and to the activities of the whistleblowers. It is inevitable that we must ask the question is the intent of the investigation to mitigate the attention to the underpayments; was the intent of the mitigate to derail attention—from the real problems of the underpayments? I have to conclude that this was the case.

The prerogatives of Congress are not at stake, and today we should be focusing on the oil companies and the fact that they endeavored to deny revenues to the American public.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2½ minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, when there is a tobacco scandal, who do we bring in before Congress? The tobacco company executives.

When Ford and Firestone are implicated in the death of 138 Americans and hundreds of others, who do we bring in to testify? The CEO of Ford, the CEO of Firestone.

When the oil companies, however, are found ripping off the American taxpayer to the tune of \$438 million, with potentially billions of additional dollars still unaccounted for, who does the Committee on Resources bring in? They bring in the oil company executives? No. The whistleblower. Let us investigate the whistleblowers.

Mr. Speaker, if the public is looking at this and they are wondering what Congress is doing in the final 2 weeks, they just have to look on the Republican side. The President deploys the Strategic Petroleum Reserve. The Republicans hold hearings, both the Senate and House energy committees last week. What is the scandal that they are investigating?

The price of oil was nearing \$40 a barrel when the President deployed it. It is now down to \$32 a barrel. The scandal? The price of oil has dropped. The consumers have benefitted. Gasoline prices are down. Home heating oil prices are down. Let us have hearings on the House and Senate side.

Now, on the final day of Congress, again, the oil industry and the cross hairs of the American public wondering what Congress is doing about it. Are we bringing in the executives to ask beyond that \$438 billion in oil, how about natural gas? How about the other oil companies?

Are there billions of other dollars that we could be using for prescription drugs, that we can be using to ensure that we rebuild schools in this country that the oil companies are not paying in taxes? No, we do not have that hearing. The Republican majority would have us believe that POGO, the Project on Government Oversight, is the problem, POGO. What Walter Kelly, the old cartoonist who used to draw the Pogo strip, he once remarked, "We have met the enemy, and it is us."

The enemy is the Republican Congress. They refuse to have hearings on the issues of what the role is of the oil industry and driving up oil prices and denying the American people the taxes, the royalties, which they rightly deserve in order to ensure that our government programs help the poorest people in our society. Vote no on this resolution.

Mr. YOUNG of Alaska. Mr. Speaker, I yield 1 minute to the gentleman from Ohio (Mr. TRAFICANT).

Mr. TRAFICANT. Mr. Speaker, I support the resolution. Congress has become background music in a doctor's office. Witnesses come before Congress and lie every day, and Congress does nothing about it depending upon the partisanship of the issue.

If you are a chairman and you determine there is something and you sub-

poena a witness, that witness should be there; and if they are not, the Congress should put its foot down. In America, the people govern; and, quite frankly, we do not any more.

Congress does not govern anything. You have turned it over to the White House, and the White House does not govern. They have turned it over to the bureaucrats.

When our committee subpoenas somebody, they should be there; and if they are not, they should be held in contempt. I support the gentleman from Alaska (Chairman YOUNG). He is doing what is best for America. Let us take this government back to the people.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, we have immense power in this body. We have the power to do things that other people only dream about. We can do some wonderful things. We can fight for a cure of cancer. We can feed hungry children. We can defend this country by making the resources available to do all of those things. But every now and then in the history of this Congress, we also have the ability to run off the tracks and to bring down the power of this institution on an individual or an organization or a couple of individuals and put them in such jeopardy and deny them such rights that it is a nightmare to the average citizen of what they would do in that situation. That is why there are rules.

There are rules to protect the American citizen against its government. In court, in grand jury proceedings, in the Congress of the United States, when you ask a question to a witness, the witness, according to the Supreme Court and to our Constitution, they have a right to know why you are asking that question and is that question pertinent to this investigation.

Let me tell my colleagues, in the circus we were running in this committee at that time, the members did not know what was going on in that investigation. The members did not know why the questions were being asked. The members did not know why information was being subpoenaed, but the fact of the matter was these three witnesses came before our committee. They answered numerous questions. They submitted depositions. They provided thousands of pages of testimony, and today none of them have been charged with anything, other than in the allegations of speeches by Members of Congress besmirching their reputations.

Mr. Speaker, I happen to think, as I said at the outset of these hearings, I think there some real bad judgment has been made and maybe some wrongdoings that have been had, but that is not what these Members are in liability for. These Members are in liability now because we shifted from that hearing in the middle to questioning about whether or not some-

thing was wrong in a lawsuit in Texas, and we were going to adjudicate whether it was. We do not adjudicate.

We do not adjudicate. So they refused to testify, because the committee already had the information, but it was once suggested that maybe they could be caught for perjury. So they did not testify. They said you have the information from another source, some of which was sealed or not sealed.

This committee never laid out for them the pertinency of those questions to that investigation at that time. As the Supreme Court has recognized, when you put a person in that kind of jeopardy, the average American, the average American who is sitting there in front of a big committee of Congress, they have rights. They need protection, because the government is not always right; that is why we changed the law with respect to the Internal Revenue Service, because they made decisions about people's guilt, about people's liabilities, hounded them and badgered them and intimidated them with the power of the Government. They threatened people with jail.

Mr. Speaker, that is where these three people sit today. After being badgered and hounded, being called common thieves by members of the committee, in spite of no evidence that that was the case, whether or not they were involved in the regulations, the best evidence we have today is the sworn testimony of the people from the Department of Interior that had no impact, little involvement in those regulations.

The best evidence we have today of their involvement in the court case in Texas was the evidence that the oil companies took from this hearing and ran over to that court case. The judge said get out of here. Today, they are put before this Congress with the full force and effect.

But who is not here? As many of my colleagues pointed out, the oil companies are not here. After admitting and settling to underpaying plight terms, it is like we do not admit any liability, admit or deny, you know, how you do when you settle a lawsuit. We cannot tell you whether we are guilty or not. We are just going to put this \$450 million out there out on the table because we want this to go away.

What these oil companies did to the taxpayers of the United States, they lied to them. They cheated to them. They wrongfully withheld payments that were entitled to each and every taxpayer of this country. Now they settled for half a billion dollars, \$438 million. It is estimated, as the gentleman from California (Mr. HORN) said in his Subcommittee on Government Management, Information and Technology, that it could be as high as \$2 billion to the Federal taxpayer.

1130

Many of these same oil companies settled with the State of California. When they took the money from the

State of California, they took it from the schoolchildren, because the money was destined for the schoolchildren of California. They settled there for, I think, almost \$2 billion in underpayments, maybe more. I do not have the exact figure, but it runs to the billions.

So those companies who cheated and lied did not receive a single question from this committee. Did not receive a letter. Did not receive a subpoena. Did not receive a letter of inquiry. Were not asked to testify about cheating the Federal Government. But the organization, the people who blew the whistle and said the government is not doing its job, and they came under a Civil War statute was to protect the government from being ripped off by the merchants during the Civil War by supplying us phony goods or overcharging us. They came under that Civil War statute and they said, "Hey, you guys are not doing your job, they are cheating you."

Yes, they were. And they were entitled to recovery. They may have shared that recovery in a wrongful fashion, but to date nobody has been charged with doing that, and the Justice Department has had this for a year and a half, almost 2 years.

Why the imbalance? Why are we going after these people and attributing criminal liability? This is not about our subpoena power. These people answered the subpoenas. They came to the committee. They turned over the documents. But when they were asked these questions, knowing their rights under the Supreme Court decisions that have thrown out contempt citations from this, said time and again this citizen has not been protected from the powers of this Congress; they said that question is not pertinent. I do not believe it is pertinent. And as the Supreme Court says, the citizen has to sit in the chair and is compelled to make a choice immediately.

So on advice of their counsel, they quickly said, "I do not believe that question is pertinent," and we have a right to go forward with this process if we believe it was.

I have to say to my colleagues, nobody laid the foundation for these citizens so they could determine what we were talking about in this hearing, because this hearing was from hell to breakfast on subject matter. It was all over the room. We changed the direction of this hearing numerous times. And I do not think that we ought to attach criminal liability to these citizens that did such an incredible service for the taxpayers and the citizens of this country. We certainly should not do it in the name of oversight, because if we do it in the name of this oversight, we are doing it in the name of one-sided oversight.

Mr. Speaker, if we are going to call POGO, if we are going to call these three citizens, we should have called the oil companies. I am sure we will call the trial attorneys and the tire

companies in the Firestone investigation. I am sure we will call the victims and the tobacco companies. But here we only called one.

Do not do this to the citizens of the United States. They may end up being tried or charged by the Justice Department under the active investigation, but do not use and misuse the powers of this institution against these three citizens who did the right thing and were badgered and hounded and called names, not allowed to testify, not allowed to give opening statements, and then placed in that kind of jeopardy. It simply is not fair.

#### CONTEMPT OF CONGRESS RESOLUTION AND REPORT DISSENTING VIEWS

We strongly oppose the Resolution and Report to cite four individuals and the Projects on Government Oversight (POGO) for Contempt of Congress, a federal statutory crime punishable by up to one year in jail. From the outset, the Republican Majority's unilateral conduct of the investigation into this matter has been biased, procedurally flawed and abusive of the rights of witnesses and Members. It is a weak case to present to the House, which last sought to invoke statutory contempt powers in 1983. And even if adopted by the House over our objections, any attempt at prosecution based on this Resolution will not survive balanced judicial review.

The Majority's wrath is primarily directed at POGO a nonprofit government "watchdog" group that—among many efforts to curb waste, fraud and abuse—has been active since 1993 in pursuing oil and gas companies that have underpaid by hundreds of millions of dollars royalties owed to the U.S. Treasury for operating on public lands. In November 1998, after receiving \$1.2 million of a \$45 million settlement by Mobil Oil in False Claims Act litigation for royalty underpayments, POGO shared two-thirds (\$383,600 each) with two individuals: a Department of the Interior employee, Robert Berman, and a former Department of Energy employee, Robert Speir.

POGO and the Department of Justice dispute whether an Assistant U.S. Attorney involved in the Mobil litigation approved POGO's payments to Berman and Speir. In December 1998, the Civil Division of the Department of Justice referred the POGO matter to the Public Integrity Section of the Criminal Division for a review, in cooperation with the Inspector General for the Department of the Interior, which is ongoing. These are the proper authorities and the appropriate forum for fairly investigating whether any misconduct or illegalities occurred in making or receiving the payments and we supported the motion adopted by the Committee on Resources to release to them relevant committee records. By contrast, all but one of the Democrats present voted against the Majority's Contempt of Congress Resolution, which was adopted by a 27 to 16 vote on July 19, 2000.

We oppose this Resolution because in the course of this lengthy investigation, the Majority has stepped beyond the bounds of legitimate inquiry. In an abusive manner, the Majority has used the powers of subpoena and the sanction of contempt to pursue subjects tangential to the Committee on Resources' jurisdiction. The Majority has conducted this investigation in a manner that serves the interests of lawyers for oil and gas companies involved in pending royalty underpayment litigation as well as those who are currently challenging in federal court royalty valuation regulations recently

issued by the Department of the Interior to curb royalty payment abuses.

It is noteworthy that the Majority has spent well over a year investigating those who helped expose royalty cheating and whose efforts contributed to the recovery to date by the United States of \$300 million from litigation settlements. But they have done nothing to investigate whether companies extracting oil and gas from federal lands are systematically underpaying royalties, a subject clearly within the jurisdiction of the Committee on Resources and with significant fiscal implications to taxpayers.

The Majority unilaterally drafted the lengthy Resolution and Report and first made it available to Democratic Members of the Committee less than 24 hours prior to the Committee on Resources' markup on July 19th. This rush to judgment on Contempt of Congress, a federal crime, is typical of the strictly partisan investigation, which has been prejudiced from the beginning with assumptions of guilt and illegalities. Indicating all with a broad brush, the Resolution deems each individual cited as equally guilty no matter how trivial the alleged transgression. Moreover, by citing the "Project on Government Oversight," with contempt, the Resolution cavalierly casts a cloud of criminal jeopardy on the officers and the entire board of directors, even though one such individual testified that he had been recused from any involvement in the royalty underpayment matters and another did not join the board until 1999.

At the July 19th Committee markup of this Resolution, the Majority failed to provide Members with the language of the contempt statutes. They cited no judicial standards or precedents of the House for applying those criminal statutes in a contempt proceeding. They did not adequately explain or refute the legal rationale that the subpoenaed parties, based on advice from counsel, had asserted when they declined to answer specific questions or provide specific documents precisely as sought by the Majority. And they neglected to explain to Medicare that witnesses had appeared at hearings and produced thousands of pages of documents in compliance with multiple subpoenas (Attachment A).

#### LEGAL STANDARDS FOR CONTEMPT OF CONGRESS: ALL ELEMENTS OF THE OFFENSE SHOULD BE PROVEN BEYOND A REASONABLE DOUBT

The refusal to answer a question or provide a document demanded by a committee does not per se constitute contempt of Congress under the statutes. William Holmes Brown, who served as House Parliamentarian for twenty years, provides guidance for Members regarding contempt powers and procedure in House Practice: A Guide to the Rules, Precedents and Procedures of the House (1996): "The statute which penalizes the refusal to answer in response to a congressional subpoena provides that the question must be 'pertinent to the question under inquiry.' 2 U.S.C. 192. That is, the answered requested must 91) relate to a legislative purpose which Congress may constitutionally entertain, and (2) fall within the grant of authority actually made by Congress to the Committee. Desher, Ch 15 Sec. 6. In a prosecution for contempt of Congress, it must be established that the committee or subcommittee was duly authorized and that its investigation was within the scope of delegated authority. U.S. v. Seeger, C.A.N.Y. 303 F.2d 478 (1962). A clear chain of authority from the House to its committee is an essential element of the offense. Gojack v. U.S., 384 U.S. 702 (1996)." House Practice at pages 427-428.

Brown further observes that the requirement that a committee question be pertinent

is an essential factor in prosecuting the witness for contempt, that the committee has the burden of establishing that a question is "pertinent," and that the committee's determination is ultimately subject to a strict standard of judicial review: "In contempt proceedings brought under the statute, constitutional claims and other objections to House investigatory procedures may be raised as a defense. *U.S. v. House of Representatives*, 556 F. Supp. 150 (1983). The courts must accord the defendant every right 'guaranteed to defendants in all other criminal cases.' *Watkins v. United States*, 354 U.S. 178 (1957). *All elements of the offense, including willfulness, must be proven beyond a reasonable doubt.* *Flaxer v. United States*, 358 US 147 (1958)." House Practice at page 428. [Emphasis added]

Accordingly, because a contempt charge must meet strict judicial review standards, it is our recommendation that Members of the House consider themselves as if jurors in a criminal trial and apply the "beyond a reasonable doubt" standard in evaluating the conduct of those charged with contempt under 2 U.S.C. 192. The definition of "beyond a reasonable doubt" is as follows: "*The doubt that prevents one from being firmly convinced of a defendant's guilt, or the belief that there is a real possibility that a defendant is not guilty.*" 'Beyond a reasonable doubt' is the standard used by a jury to determine whether a criminal defendant is guilty. In deciding whether guilt has been proved beyond a reasonable doubt, the jury must begin with the presumption that the defendant is innocent." Black's Law Dictionary (Seventh Edition, 1999) at page 1272. [Emphasis added]

*The majority has failed to meet its burdens of proving the statutory elements necessary for contempt prosecution*

In construing the contempt statute, the Supreme Court has closely scrutinized a committee's stated purpose of the investigation to determine whether a demand is pertinent to the question under inquiry. If the committee's own descriptions are inconsistent with its actions or have changed over time, such confusion "might well have inspired doubts as to the legal validity of the committee's purposes." *Gojack v. United States*, 384 U.S. 702, 709 (1966).

On June 9, 1999, the Committee on Resources on a party line vote approved a Resolution to authorize Chairman Don Young to issue subpoenas in connection with: "(1) policies and practices of the Department of the Interior and Department of Energy regarding payment of employees and former employees from sources outside of these Departments that may be related to the employee's past or present work within the Department, and (2) payments from the Project on Government Oversight, POGO, to Mr. Robert Berman, an employee of the Department of the Interior, and Mr. Robert Speir, a former employee of the Department of Energy . . . ."

During the debate on the June 9, 1999 resolution, Energy Subcommittee Chairman Barbara Cubin responded to Delegate Carlos Romero-Barcelo's concerns about the Committee acting to intervene in a pending Department of Justice criminal investigation by explaining that the focus would be on oil royalty valuation legislation and regulation: "It isn't the intent of the committee to intervene in this procedure at all, but we do need to know what is going on and what has gone on because we have things in front of us as oil valuation is concerned that are directly the purview of this committee. We have legislation in front of us that tries to determine a valuation method for oil. Right now, the administration and the Minerals Management Service has some regulation or proposed regulation that should not go into

effect about the valuation of oil because we don't know whether this action and this payment of money has anything to do with those new regulations. We just need to know whether the two people involved had any influence on the MMS."

Notwithstanding this rationale for the investigation, at the time the Committee approved the contempt Resolution on July 19, 2000 the Majority had sought no testimony related to oil valuation regulations, policies, or legislation. No witness had been called to establish a foundation for the relevant "policies and practices" of the Departments of Interior and Energy. By stark contrast, Democratic Members were admonished by the Majority at the May 4, 2000, Subcommittee hearing that the purpose of the investigation did not include inquires on oil royalty valuation policies or fraudulent oil company practices.

Simply stated, the Majority has not articulated a purpose for obtaining the information sought by the contempt Resolution that is within the scope of the Resources Committee's authority as delegated by the House. The Supreme Court has held that a clear line of authority for the committee and the "connective reasoning" to the questions is necessary to prove pertinency in statutory contempt. *Gojack v. United States*, 384 U.S. 702 (1966). Instead, the Majority has constantly shifted their explanations of what they are investigating and why. For example, on March 6, 2000, Chairman Young wrote to POGO's attorney to explain that broad subpoenas were necessary to "to begin weighing the merits of those conflicting statements" made in civil litigation.

The purpose and scope of the Majority's inquiries are still not clear to Democratic Members. An investigation of oil royalty matters in furtherance of a legislative purpose could properly be crafted within the Committee on Resources' jurisdiction, but the Majority has failed to do so. The Majority established no "connective reasoning" or foundation based on the committee's jurisdiction for the pertinence of the questions asked and the documents demanded of the witnesses at the time they were asked and demanded. Additional hearings or ex post facto rationale cannot reestablish a foundation for pertinency that did not exist at time that a witness was at peril of being charged with contempt.

The Supreme Court has held the conduct of Congress to strict scrutiny when applying the contempt statutes: "It is obvious that a person compelled to make this choice [of whether to answer] is entitled to have knowledge of the subject to which the interrogation is deemed pertinent. That knowledge must be available with the same degree of explicitness and clarity that the due process clause requires in the expression of any element of a criminal offense. the 'vice of vagueness' must be avoided here as in all other crimes." *Watkins v. United States*, 354 U.S. 178 (1957).

In summary, the Majority has not met the substantial burden of proving the elements of statutory contempt beyond a reasonable doubt. The House cannot responsibly send to the U.S. Attorney—who already has plenty of work to do combating serious crimes—a contempt Resolution that is so flawed that prosecution will be futile.

*The majority's investigation is procedurally flawed and failed to comply with committee and House rules*

In applying the contempt statute, the courts have required that a committee strictly follow its own rules and those of the House. *Yellin v. United States*, 374 U.S. 109 (1962). The conduct of the investigation related to this Contempt of Congress Resolu-

tion is so egregious that any attempt at prosecution will not survive judicial review. Among the procedural deficiencies are the following:

(1) Failure to follow House Rule XI, Clause 2(k) applicable to investigative hearing procedures. On June 9, 1999, by a party line vote, the Committee on Resources authorized Chairman Young to issue subpoenas related to an "oversight review" of the "policies and practices of the Department of Interior and Energy" and "payments from the Project on Government Oversight" to Robert Berman, an employee of the Department of the Interior, and Robert Speir, a former employee of the Department of Energy. It was not until June 27, 2000, however, that Chairman Young authorized Subcommittee Chairman Cubin to "begin an investigation to complement the oversight inquiry underway." This is a meaningless effort to draw a distinction between "investigation" and "oversight" when no such distinction exists for purposes of House Rule XI, Clause 2. Accordingly, over the protests of Democratic Members, the Majority failed to follow House Rules applicable to the rights of witnesses in Subcommittee on Energy and Mineral Resources hearings held May 4 and May 18, 2000. These flaws range from the failure to provide witnesses with the Committee on Resources and House Rules prior to their testimony, to the failure to go into executive session.

(2) Failure to allow Members to question witnesses under House Rule XI, Clause 2(j). On multiple occasions, the Subcommittee Chair prevented Democratic Members from exercising their rights to question witnesses, either under the five-minute rule or time allocated to the Minority under clause 2(j)(B).

(3) Failure to have a proper quorum under Committee on Resources Rule 3(d). The Committee rules require a quorum of members, yet no such quorum was present during the hearings at the times of votes on sustaining the Subcommittee Chairman's rulings on whether questions were "pertinent."

(4) Failure to allow witnesses to make an opening statement under Committee on Resources Rule 4(b). This rule states, "Each witness shall limit his or her oral presentation to a five-minute summary of the written statement, unless the Chairman, in consultation with the Ranking Minority Member, extends this time period." In contravention of this rule and longstanding committee practice, the Chair refused to grant hearing witnesses the opportunity to make opening statements. Democrats objected that this was prejudicial to subpoenaed witnesses in what amounted to adversarial proceedings but were overruled by the Subcommittee Chair.

(5) Failure to hold a hearing on the contempt of Congress issues. It is fundamentally unfair not to allow the parties charged with contempt an opportunity to fully and fairly detail their legal arguments for declining to answer questions or supply specific documents in contention. The Chair repeatedly refused the efforts of Democratic Members to recognize legal counsel to address the Subcommittee on these issues. The failure to provide due process in a hearing to those accused of violating a criminal statute further weakens the Majority's case.

*The majority's investigation improperly attempts to use the power of Congress to provide discovery for oil and gas companies in royalty litigation against the United States*

We strongly protest the Majority's transparent attempt to use the powers of the Committee on Resources—and of the House—to assist favored parties in pending litigation with hundreds of millions of dollars of royalty payments at stake. The Majority's difficulties in describing a legitimate purpose

for their investigation are compounded because they appear to be seeking information which would damage interests of the United States both in royalty underpayment litigation and in industry challenges to recently revised oil and gas royalty regulations. Their interest in the pending litigation matters has been made clear, for example, by a March 6, 2000, letter from Don Young to POGO's attorney which states in part: "On November 29, 1999, an adversary of your clients' interests in the proceedings of Johnson v. Shell litigation provided sworn testimony in a federal court hearing which appears to directly contradict sworn statements made by your client, Danielle Brian. To begin weighing the merits of those conflicting statements, Committee counsel telephoned you and explained that I intended to subpoena records of telephone calls between POGO or Danielle Brian and that witness."

Given the Majority's keen interest in this pending civil lawsuit, it is not accidental that lawyers for the companies involved in those proceedings have been closely monitoring the Committee on Resources' investigation. Because the Chair has ruled that the investigation is not restricted by attorney-client or other privileges, the Majority has freely sought to obtain documents and probe on matters which would otherwise be off-limits in court.

On July 10, 2000, the law firm of Fulbright and Jaworski filed a motion in the U.S. District Court for the Eastern District of Texas in "Opposition of Defendant Shell Oil Company to Project on Government Oversight and Henry M. Banta's Motion for Protective Order" (Attachment B). In that motion, Shell Oil's lawyers argued that new evidence developed by the Subcommittee on Energy and Mineral Resources required that the court reexamine the relevance of the payments to Berman and Speir, asserting that "subsequent testimony by Mr. Banta and Ms. Brian in recent Congressional oversight hearings demonstrate that POGO did not accurately advise the court in its pleadings . . .". As evidence, the Shell lawyers cite various statements and documents used at the Subcommittee on Energy & Mineral Resources' hearings on May 4 and May 18, 2000.

POGO had previously argued to the court that this subject matter was irrelevant to the issues of royalty underpayments: "it is the law of case that the Berman/Speir matter is unrelated to the merits of the case." On July 14, 2000, the federal judge agreed and ruled the Shell's lawyers were not allowed to ask any questions of Henry M. Banta regarding POGO's sharing of settlement proceeds with Robert Berman and Robert Speir. (Attachment C)

In effect, the federal judge's July 14, 2000, ruling affirms his prior decision that how POGO distributed its portion of the Mobile settlement is irrelevant to the central question in the pending Johnson v. Shell litigation: did Shell underpay royalties owed to federal government for oil and gas obtained from public lands?

The oil and gas industry's attempt to distract attention away from this core issue has failed thus far in the courts and it should meet a similar fate in the Congress. Seeking to obtain and disclose information to assist participants in litigation is not a legitimate purpose of a committee investigation. Having provided no adequate jurisdictional foundation for the relevance of the Majority's questions and document demands at issue in this Resolution, there is accordingly no basis for the House to hold in contempt the individuals cited or POGO.

#### *Analysis of each citation for contempt in the resolution*

##### *A. Mr. Henry M. Banta*

February 17, 2000, Subpoena Duces Tecum

(1) *Redacting Records*: Mr. Banta is cited for providing a record of the February 5, 1998, POGO Board Meeting minutes "redacted so severely as to have no meaning." In response to the Chairman's June 26, 2000, letter, Mr. Banta's attorney supplied a less redacted copy of the same record. Thus, the charge is without merit.

Moreover, Mr. Banta, as a private attorney and in his role as Chairman and Member of the Board of Directors of POGO, was not the individual responsible for maintaining POGO's Board Meeting minutes. POGO's attorney supplied the Board Meeting minutes, including subsequent revisions to accommodate the requirements of the subpoenas issued to POGO. Thus, Mr. Banta should not be held in contempt for not producing such documents.

(2) *Refusing to Comply with Orders to Produce*: The Resolution cites Mr. Banta with contempt of Congress for not providing certain documents. Mr. Banta, on advice of counsel, has not produced such records that relate to his work as counsel to the State of California, citing 30 U.S.C. 1733 which restricts the disclosure by states of confidential business information provided by the Department of the Interior in the administration of oil royalty programs. Mr. Banta, in the course of his representation of the State of California's Auditor, is required to keep certain information confidential. It is not within Mr. Banta's authority to release or produce these records for the Committee on Resources. Mr. Banta should not be held in contempt for not producing that which he is not authorized to release.

April 10, 2000, Subpoena Duces Tecum

(1) *Failure to Comply*: The Resolution charges Mr. Banta with contempt for not producing a log of responsive records withheld under a claim of privilege. However, Mr. Banta, through his attorneys, did produce a record of responsive records withheld under a claim of privilege and identified the privilege. A log is not specifically required under the subpoena. The subpoena required Mr. Banta to "specify and characterize the record so withheld and specify the objection or constitutional privilege under which the record is withheld." Consequently, when Mr. Banta's attorneys provided additional correspondence in response to the Chairman's rejection of the previously supplied log, and explained the constitutional privilege under which a document was being withheld; they complied with the terms of the subpoena. Mr. Banta should not be held in contempt for not producing a log that (a) he was not specifically required to produce and that (b) he provided in material fact in correspondence.

(2) *Refusal to Produce*: The Resolution cites Mr. Banta with contempt because he "possesses but did not produce an unredacted agenda for the February 17, 1998, POGO Board Meeting and unredacted minutes of the October 27, 1998 POGO Board Meeting and unredacted minutes of the October 27, 1998 POGO Board Meeting." To the contrary, Mr. Banta does not possess these documents, nor was he responsible for maintaining such documents. POGO, through its attorney, has supplied redacted versions of these documents, including revisions, in response to the subpoenas issued to the corporate entity. The House should not find Mr. Banta in contempt on these facts.

Subpoena to Appear on May 18, 2000

*Refusal to Answer*: On this count, the Resolution cites Mr. Banta with contempt of Congress because during the May 18 hearing,

when asked if he knew about the Johnson v. Shell lawsuit while it was under seal, Mr. Banta, on advice of counsel, refused to answer the question on the grounds that it was not pertinent to the investigation. The Majority failed to provide a proper foundation or "connective reasoning" for the question to be pertinent to the jurisdiction of the Committee on Resources. Moreover, as discussed above, seeking to obtain and disclose information to assist parties in pending litigation is not a legitimate purpose for a congressional investigation. Moreover, at the time the Chair ruled the question "pertinent" and polled the Members on the question, the Subcommittee did not have a quorum for conducting business as required under the Committee on Resources' rules.

##### *B. Mr. Robert A. Berman*

Subpoenas to Appear on May 18 and July 11, 2000

*Refusal to Answer*: On May 18, 2000, when Mr. Berman appeared under subpoena before the Subcommittee, he objected to testifying at a public hearing on the grounds that Members of the Majority had defamed him during the hearing held May 4, 2000. For example, Rep. Kevin Brady of Texas had called him a "common thief" during the prior hearing. On advice of counsel, he declined to answer questions unless Members waived their immunities from lawsuits. Mr. Berman also demanded that the Subcommittee convene in executive session as required under House Rule XI, Clause 2(k). Despite objections by democratic Members, the Chair refused to apply the House Rules on investigative hearing procedures.

After confirming that they had in fact failed to follow the House Rules governing investigative hearings, the Majority attempted to cure the error by subpoenaing Mr. Berman to reappear at a second hearing on July 11, 2000. Mr. Berman, on the advice of counsel, refused to answer certain questions in executive session. Only after voting on a factually incorrect motion to report Mr. Berman's responses to the Committee did the Majority allow Mr. Berman to make a statement to the Subcommittee on Energy and Mineral Resources. The Majority's failure to follow the Committee and House Rules that protect the rights of witnesses, their failure to establish a clear purpose within the Committee on Resources' jurisdiction for the investigation, and their failure to provide a proper foundation or connective reasoning for their questions, collectively add up to a failure to prove the elements of criminal contempt beyond a reasonable doubt. Under these circumstances, Mr. Berman's conduct does not justify a citation for contempt by the House.

##### *C. Mr. Keith Rutter*

April 10, 2000 Subpoena Duces Tecum

(1) *Withholding Records*: The Resolution cites Mr. Rutter with contempt for withholding certain tax documents. Under the subpoena, Mr. Rutter, the POGO employee in charge of general administrative matters, was directed to produce copies of POGO's annual IRS Form 990 and Form 1023 (relating to tax-exempt status). The subpoena also demanded production of POGO's original application for tax-exempt status and subsequent correspondence with the Internal Revenue Service. In June 1999, POGO provided the requested documents for tax year 1998, which included revenue from the oil royalty litigation, as well as reporting the public service awards to Berman and Speir. On July 11, 2000, POGO, through its attorneys, provided the Committee with an amended tax return for 1998. In a letter dated April 21, 2000, POGO's attorney notified the Committee that they would not produce the additional

tax documents on the grounds that the Chair's demand for the other tax documents unrelated to the payments to Berman and Speir were not pertinent to the stated purpose of the Committee's investigation and, additionally, further inquiry into POGO's tax status was outside the Committee's jurisdiction. Ironically, POGO's tax returns, including those subpoenaed by the Majority, are publicly available. The House should not find Mr. Rutter in contempt for not producing material which is not pertinent and which the Majority could have accessed through widely available means.

(2) *Failure to Produce:* The Resolution cites Mr. Rutter with contempt for failure to produce a log of the responsive records withheld by him under a claim of privilege. A log is not specifically required under the subpoena. The subpoena required Mr. Rutter to "specify and characterize the record so withheld and specify the objection or constitutional privilege under which the record is withheld." As is evidenced by the Majority's own exhibit, this requirement has been met. Therefore, the House should not find Mr. Rutter in contempt on these grounds.

*D. Ms. Danielle Brian Stockton*

June 18, 1999 Subpoena Duces Tecum

(1) *Redacting Records:* The Resolution cites Ms. Brian with contempt for withholding minutes of two POGO Board Meetings. Ms. Brian has asserted that she does not hold or possess these or any other documents not previously supplied to the Committee under her subpoena. She was not responsible for maintaining these documents. In addition, POGO, through its attorney, has supplied redacted versions of these documents, including revisions, in response to the subpoena issued to the corporate entity. The House should not find Ms. Brian in contempt for not producing records that which she does not possess.

(2) *Withholding Records:* Under this citation, the Resolution charges Ms. Brian with contempt for not producing agendas and minutes from POGO Board Meetings that occurred on January 5, 1995; December 9, 1996; April 26, 1999; and September 9, 1999. POGO produced these records, through its attorney as required by the subpoena issued to POGO. Ms. Brian has asserted that she does not possess these documents and was not responsible for maintaining the documents. As Ms. Brian does not have such records within her possession, she could not produce them. Instead, the documents were provided to the Committee by POGO's attorney in response to the subpoena of POGO. The House should not hold Ms. Brian in contempt for not producing documents that she does not have in her possession and which have been provided to the Committee under the proper subpoena.

February 17, 2000 Subpoena Duces Tecum

(1) *Failure to Comply:* The Resolution cites Danielle Brian with contempt for not producing unredacted telephone records from her office and personal residence for a period covering eighteen months. Ms. Brian offered to provide a redacted version of the phone records under this subpoena. However, the Majority insisted that they be allowed to review all phone records—personal and professional—from the 18-month period and then decide which ones to copy for their files. POGO is an organization that works extensively with whistleblowers from a wide array of areas, including defense contractor and health care fraud and they have asserted a First Amendment privilege against allowing unfettered access to these. Since Ms. Brian was willing to provide redacted versions of these records, and the Majority refused to negotiate a reasonable alternative, the

House should not find Ms. Brian in contempt on this charge.

Subpoena to Appear on May 18, 2000

*Failure to Reply:* The Resolution charges Ms. Brian with contempt for her refusal to answer a question relating to the extent, if any, of her knowledge of Johnson v. Shell litigation while it was under seal. As discussed above, Ms. Brian should not be held in contempt for declining to answer a question related to the Johnson v. Shell litigation. The Majority has failed to provide either the connective reasoning or build a foundation to justify this question as pertinent to the investigation. *Gojack v. United States*, 384 U.S. 702 (1966). As stated above, it is not a legitimate purpose for a congressional investigation to seek to obtain and disclose information to assist parties in pending. Moreover, at the time the Subcommittee Chair ruled the question "pertinent" during the hearing and polled the Members on the question, there was no quorum present as required under the Committee on Resources' rules. Accordingly, the House should not cite Ms. Brian for contempt in this instance.

*E. Project on Government Oversight*

February 17, 2000 Subpoena Duces Tecum

(1) *Refusal to Produce Records:* The Resolution cites POGO, a nonprofit corporate entity, with contempt for not producing records showing the names and office addresses of POGO Directors responsible for POGO's oil royalty effort from its inception in 1993 through the present. In correspondence dated February 28, 2000, POGO's attorneys stated that POGO had not withheld records with current Board Members' names and addresses. They gave these records to the Committee in 1999 when POGO provided its 1998 nonprofit 501(c) corporate tax forms, which included that information. On pertinency grounds, POGO has declined to provide the names and addresses of those Board Members (if any) that were on the Board in 1994 and have left since that time. They have provided the name and address of one Board Member who joined in 1999.

Secondly, the Resolution cites POGO for contempt for not producing records concerning payments to Messrs. Berman and Speir discussed by POGO since January 1, 1999. To the contrary, POGO, through its attorneys, has provided the documents to the Committee. Accordingly, the House should not find POGO in contempt on these grounds. Moreover, even if the House was to find POGO in contempt, it is unclear who the U.S. Attorney would be compelled to prosecute as the Majority has not specified which of the officers of board of directors would be the responsible parties. At least one of the board members, Chuck Hamel, testified that he had been recused from all matters dealing with the royalty underpayment litigation.

(2) *Refusing to Comply:* The Resolution cites POGO for refusing to provide a log of responsive records withheld from production under this subpoena. POGO, through its attorneys, has asserted that they have produced all responsive records. In those instances where they have declined to provide a document, they have, as required under the subpoena, provided a written explanation. A log is not specifically required under the subpoena. The subpoena required POGO to "specify and characterize the record so withheld and specify the objection or constitutional privilege under which the record is withheld." This requirement has been met. Therefore, the House should not find POGO in contempt. Again, even if the House were to find this nonprofit corporate entity in contempt, it is unclear who the U.S. Attorney would be compelled to prosecute, as the Resolution does not specify which of the officers or board of directors are to be prosecuted.

Mr. YOUNG of Alaska. Mr. Speaker, I yield 30 seconds to the gentleman from Texas (Mr. Brady).

Mr. BRADY of Texas. Mr. Speaker, we asked. To the attorney for the special interest group we asked, "Did you have knowledge of this lawsuit that was under seal, that was held confidential by the Court?" All he had to do was answer, "No, of course not. I am a private citizen. Why would I know of a sealed document?"

Of the two government employees, we wanted to ask, "What service did you provide to receive three-quarters of a million dollars?" Because one does not get something for nothing in this world.

We could never get these basic pertinent questions answered. That is the truth we were seeking.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have heard a lot today, and I would just like to clarify some of the things that were said. The rules of this House, the Supreme Court say the committee can judge what is pertinent, not the witness. That is the rules and that is the Supreme Court. We told all three of these parties that was the case, and they still declined to answer.

Let us make it perfectly clear that POGO is not the whistleblower. Neither are the gentlemen or ladies that are involved in these contempt citations the whistleblowers. The whistleblower, Johnson, was filed on top of for money. POGO now is under criminal investigation as I stand here and speak.

Mr. Speaker, I know that this is such a serious debate, that we have to have more debate. So I ask unanimous consent, pursuant to clause 2 of rule XVI, to withdraw the resolution.

The SPEAKER pro tempore (Mr. PEASE). Pursuant to clause 2 of rule XVI, and the precedent of the House of April 8, 1964, the gentleman does not require unanimous consent. The gentleman may by right withdraw the resolution at this point.

The resolution was withdrawn.

## RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 11 o'clock and 36 minutes a.m.), the House stood in recess subject to the call of the Chair.

1210

## AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. LATOURETTE) at 12 o'clock and 10 minutes p.m.